Q. I don't understand. You say it is higher? A. I understand it costs more if you don't have it under a group plan.

Q. And do the members of the Medical Society, including you, carry this insurance under the group plan? A. Yes, sir.

Q. Do you understand that it would have any effect on hospital facilities?

Mr. Jaureguy: Well, if this again is hearsay with him—

The Court: He may answer.

A. It is hearsay.

The Court: He wants to know if you don't belong to a society does that handicap you?

A. Well, I belong to the Society. I have never met with any opposition yet.

The Court: He wanted to know if you knew what happened.

Mr. Jaureguy: The witness says it is hearsay, so I object to it.

The Court: Stop arguing. He can tell what his judgment is and what is known in the profession. What would happen as to hospitals if you were expelled from the
660 Society? Stated in another way, do you have to belong to a society to maintain relations with the hospitals? A. I would say No. I understand that there was a provision at one time that you had to be a member of the Medical Society to be on the staff of a hospital, but I think that was changed. My understanding—and I have read it, too,—that a doctor can be on the staff providing they are licensed to practice medicine in the State of Oregon.

The Court: His question is broader than that. Regardless of being on a staff—everybody who practices in a hospital isn't on the staff, is he? That is a more limited group, isn't it?

A. Well, they are on some form of staff.

The Court: You use the word "staff" in that respect?

A. I am using the word—there may be different classifications.

The Court: I understand.

Mr. Weinstein:

Q. Dr. Palmer, do you understand that the doctors here, at least in Portland, have an official telephone exchange? A. I understand they have, yes.

Q. Is that limited, to your knowledge, to members of the Medical Society? A. As far as I know. I don't know. I don't belong to either one of them; I don't know,
661 but I understand one is operated by the Medical Society.

Q. Do you know whether or not the doctors have an official collection agency? A. Yes, I understand they have. I have used it.

Q. Do you know whether that is restricted to members of the Medical Society? A. I couldn't say.

Q. Were you ever called to any other meetings before or after this Board of Censors meeting? A. I think I was called before the Medical Society Censor Board, I take it, along about 1936 or '37.

Q. Do you recall who was present at that meeting? A. I believe Dr. Lamb and Dr. Gambee.

Q. Which Dr. Gambee? A. E. E. I think Mr. Coughlin, Attorney, was there. There was other medical men from the Peninsula district there. I don't recall the names, but I think there probably was four or five or six there.

Q. Can you tell us what occurred at that meeting? A. It is not very clear now, but, as I recall, the things they wished to know was whether we were accepting patients who were covered by the National and Industrial Hospital Associations. And, as I recall, we were informed that they were considered unethical groups and suggested that we discontinue doing work for them, or something to that effect.

662 Q. Dr. Palmer, did you accept patients from the Multnomah Medical Service Bureau? A. Yes, sir.

Q. During that time were you ever asked to solicit business for the Multnomah Medical Service Bureau? A. I remember at one time it was suggested to me when I did agree to do work for the Multnomah Service Bureau, if was suggested to me that I was in a position where I might be able to swing some of their contracts to them.

Q. Did you do that? A. No, sir.

Q. Are you a participating doctor of the Oregon Physicians' Service? A. No, sir.

Q. Were you ever? A. Yes, sir.

Q. Why did you stop? A. About three years ago the schedule of fees, the percentage they were paying on their fee was so low—it got to about 20 per cent on the dollar and I couldn't do business for that so I resigned.

Q. Well, while you were a participating physician in the Oregon Physicians' Service did you also treat patients or members of other hospital plans? A. Yes, sir.

663 Q. Did you notice any difference in the types of reports you had to make out to the Oregon Physicians' Service as opposed to any of the others? A. Well, they were the same as far as I could see.

Q. Did you ever get permission from any other associations to undertake a series of treatments? A. I have nearly all the cases requiring very much attention or service, I usually call to get their authorization before I proceed with the work, especially in operative cases.

Q. When you use the word "authorization" what do you mean by that? A. The first thing I want to know is if the person is protected by the hospital association that the ticket they present represents. I want to know whether they will authorize the work to be done.

Q. Is that true also with the Oregon Physicians' Service? A. All of them.

Q. You use the same procedure with all of them? A. That is right.

Q. At any time has your professional judgment as a doctor of medicine ever been called into question by any hospital association plan? A. Judgment?

Q. Has your professional judgment, as a doctor of medicine, ever been called into question by any hospital

664 association? A. Not to my knowledge.

Mr. Weinstein: Your witness.

Cross Examination

By Mr. Jaureguy:

Q. After that meeting with the Board of Censors concerning which you were shown a transcript, did anything else happen to you, about your being on or off the Society? A. Nothing ever happened.

Q. It was just dropped? A. No, I was not dropped.

Q. No. I mean the subject was dropped? They did not bother you any more about it? A. They didn't bother me any more that I know of; not directly anyway.

Q. I don't suppose you know why the Medical Society quit that policy of calling in doctors like they did you and

threatening to expel them, why they quit that in 1940? A. No, I don't. I have often wondered.

Q. You notice that was the quitting date, in 1940? A. A. They never bothered me any more, anyway.

Q. They did not even quite get the indictment up against you; they just called it off, is that about it? A. Well, I wouldn't—I couldn't say. I don't know.

Q. You have since then taken tickets for all hospital associations? A. That is right.

665 Q. Were you on a salary at any time? A. I beg your pardon?

Q. Were you on a salary at any time for any of it? A. No.

Q. Any of them? A. No.

Q. The National and Industrial and Western, I think you said. How about the Prudential; did they operate at St. Johns? A. Oh, I think there have been a few cases come through.

Q. The Multnomah County Medical Service Bureau? A. That is right.

Q. And, for a time, OPS? A. That is right.

Q. Do you handle any OPS practice now, any patients that are members of OPS? A. I look after their members, but I do not accept their tickets, as payment.

Q. Then how do you get paid? A. I let the patient pay me.

Q. You say you call up to get authorization. The National and Industrial used to have a hard-and-fast policy, didn't they, that before you could proceed with operations or any extensive treatment you must get authorization? A. They never have with me.

666 Q. They have not? A. No.

Q. But you do call up and get authorization? A. Well, if there is any doubt about it. As a rule, I go ahead and handle the case, but if it involves operative procedure or something that is going to require some special study I usually find out whether the patient is entitled to that service or not, because I do not want to do a lot of work and then find out I am holding the sack.

Q. Then you can't rely on a ticket that a person presents? A. I know nothing about what their contract calls for. That is a contract between the patient and the hospital association. I have nothing to do with that.

Q. Usually, though, it is a contract between the patient's employer and a hospital association, isn't it? A. I

don't know. I imagine the employees probably have to pay the bill.

Q. That is right; he pays the bill, but somebody else makes the contract. A. I couldn't say about that. I have nothing to do with it.

The Court: I suppose it is deducted from the wages?

Mr. Jaureguy: Yes, it is deducted from the wages. The payment is made by the employees, but the ticket an employee brings in is not sufficient, in the usual case, to justify you in proceeding on the assumption it will be
667 paid by the hospital association, is that correct?

A. Well, I assume when a patient brings a ticket that they have paid their dues and are entitled to service, but how much service I don't know. There are different types of contracts, so if there is anything that requires very much service I try to find out and make sure that they are entitled to the service I think they should have.

The Court: There are a number of insurance companies that are in that field besides the hospital associations?

A. That is right.

The Court: Your attitude is the same about all of them?

A. That is right. I am treating the patient, not the hospital association.

The Court: If, for instance, somebody has insurance with Aetna, there is nothing very unusual about it. You call up Aetna, if it is an Aetna member—

A. That is right.

The Court: —and find out what his rights are and what you can expect.

A. That is right.

Mr. Jaureguy: That is all. Thank you, Doctor.

Mr. Weinstein: That is all.

(Witness excused.)

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668 C. H. Weston was thereupon produced as a witness on behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Are you connected with the C. H. Weston Co., Inc? A. I am.

Q. In what capacity? A. Secretary.

Q. What is the nature of its business? A. General insurance.

Q. How long has it been in operation? A. Forty-five years, about.

Q. Were you at any time connected with the Oregon Medical Service, Inc.? A. Yes.

Q. In what connection? A. President.

Q. Would you tell us the nature of the business carried on by the Oregon Medical Service, Inc. A. It provided hospital and medical service for groups and individuals.

Q. Is that company still in existence? A. No.

669 Q. Could you tell us about when it went out of existence? A. Approximately 1940; 1939 or 1940.

Q. About how long had it been engaged, or how long had you been engaged with this procedure in the prepaid medical care business? A. Since 1904.

Q. Would you consider you were the first in that field, generally, in the state? A. Yes, the first in the State of Oregon.

Q. Where was the home office of the Oregon Medical Service, Inc.? A. In the Studio Building, the last time.

Q. In Portland? A. Yes.

Q. Did it have a staff of doctors? A. Yes, quite a number of them.

Q. Were some of those doctors on full time and some on part time? A. Yes, that is correct.

Q. Among the doctors on full time were there Dr. H. R. Shields and Dr. William F. Beck? A. Yes, they were both on the staff.

Q. During the period around 1937 or 1938 did Dr. Shields and Dr. Beck, to your knowledge, receive letters from the local Medical Society to the effect that they would be expelled if they did not resign from the Oregon

670 Medical Service, Inc.?

Mr. Jaureguy: I object to that as not the best evidence. The evidence is in the file.

Mr. Marcus: It is not.

Mr. Jaureguy: You do not have any letters?

Mr. Marcus: No. I am going to bring out that he saw those letters.

The Court: Yes, Answer.
A. Yes.

Mr. Marcus:

Q. Did you see these letters? A. I did.
Q. Were they turned over to you? A. One of them was. Dr. Shields turned over his letter to me.
Q. Hove you ever been able to find that letter? A. Not recently. I had it for a long time.
Q. You had it? A. Yes.

Mr. Marcus: Your Honor, I would like at this time to read from Exhibit 297 which sets forth the minutes of the Council of the Multnomah County Medical Society, April 5, 1938:

"Letter from Dr. H. R. Shields and Dr. William F. Beck stating that they had discontinued their association with unethical practice was read. Upon motion, duly made and seconded, it was voted that the following resolution be adopted:

"'Whereas, the Council of the Multnomah County Medical Society, at a duly called meeting held on November 26, 1937 * * *'"

671 The Court: You don't need to read any further. I remember it. There is a case, Mr. Jaureguy, where you and Mr. Coughlin can bring in your copies of the correspondence, if they are in your files, copies of those letters to Dr. Shields and Dr. Beck.

Mr. Jaureguy: I am not certain they are in my files. I think I had seen them somewhere.

The Court: In the Multnomah County Medical Society files.

Mr. Jaureguy: If we have them, yes, your Honor.

The Court: There is a specific instance in connection with the request for the production of correspondence. You remember I said when we deferred action on the general request to go through your files we would see how the case opened up.

Mr. Jaureguy: I certainly am not making any objection to that, your Honor.

The Court: No. You see, now we have come cnto something here. If you have got it and can find it, you can bring it in without difficulty.

Mr. Jaureguy: I think I have seen them. I thought they were in the pre-trial exhibits, but I may be mistaken.

The Court: Have you brought in correspondence like that?

Mr. Jaureguy: Not like that, no. I might say I turned over to the Reporter today—

The Court: No, I mean in the pre-trial discussions, during the course of the pre-trial have you brought in
672 correspondence like that?

Mr. Jaureguy: Yes, we have brought in correspondence.

The Court: Like that?

Mr. Jaureguy: And we have turned it over to them, much of it.

The Court: Yes.

Mr. Jaureguy: Yes.

Mr. Marcus: I might say something in that connection, your Honor. With respect to charges against a number of persons who were censored by the Society, they did turn over to us copies of those charges. As far as I can recall, it did not include these letters to Dr. Shields and Dr. Beck.

Mr. Jaureguy: Can you tell me whether you made the demand on us or whether you got an order for us to produce anything of that kind?

Mr. Marcus: I asked you for all of the correspondence and records relating to disciplinary procedure.

The Court: Don't go into that again. Go ahead with the examination of the witness.

Mr. Marcus:

Q. Did Drs. Shields and Beck thereafter resign from the Oregon Medical Service, Inc.? A. Yes.

Q. You say that around 1940 the Oregon Medical Service, Inc., as such, went out of business? A. Yes, that is correct.

The Court: Those doctors are not available at this point?

673 Mr. Marcus: These doctors resigned from the Oregon Medical Service, Inc.

The Court: They are not available as witnesses?

Mr. Marcus: They may be, your Honor.

The Court: Do you happen to know?

Mr. Jaureguy: No.

The Court: Are Drs. Shields and Beck living?

A. I am sure they are.

The Court: They are living and both are practicing?

A. They are both practicing?

Mr. Marcus: That is all.

Cross Examination

By Mr. Jaureguy:

Q. You say you are in the business of general insurance? A. Yes.

Q. C. H. Weston Co., is that the name of it? A. C. H. Weston Co., Inc., yes.

Q. C. H. Weston Co., Inc., writes policies that have something to do with medical care? A. Well, we write it in other companies.

Q. What is that? A. Well, we write it in Aetna, Continental or Commercial Casualty, or United Pacific Insurance Company; write in all of those companies.

Q. Those policies agree to indemnify the insured
674 on a certain schedule set forth in the policy? A. That is right.

Q. Is that different than the method of operation of your company, the Oregon Medical Service, Inc.? A. Well, it is an advancement in service in so far as it permits the patient to go to any doctor in the United States or any hospital in the United States. They are not limited to any doctor or any hospital.

Q. That is the point of difference? A. Yes, and that is the trend of today, I believe.

Q. Isn't there another difference, too, and that is that in contracts written by Oregon Medical Service, Inc., you agree to furnish the medical care itself? A. That is right

(Recess.)

675 Mr. Jaureguy:

Q. That is, Mr. Weston, as I understand it, there are two distinctions between the method of operation in the period about 1940 and before that and the present method. One is that the old method agreed to furnish medical care, and the present method agrees to indemnify? A. That is right.

Q. And the other distinction that follows naturally is that when medical care was furnished the entire doctor bill was paid, whereas now it is under the schedule set forth in the policy? A. That is right.

Q. So that the old system was really a prepaid medical care plan and the present system is indemnity insurance? A. Yes.

Q. Now, you had the old Oregon Medical Service, Inc., and then did you have C. H. Weston Company, too, both of them selling— A. No, the other sold general insurance.

Q. Beg pardon? A. Regular insurance, all kinds of insurance, the C. H. Weston Company.

Q. Oh, C. H. Weston Company never had a system of prepaid medical care? A. Well we operated in our own name prior to having the Oregon Medical Service, and then changed to the other.

Q. Oh, one was a successor to the other? A. Yes.

676 Mr. Jarreguy: That is all, thank you.

(Witness Excused.)

Mr. Marcus: Your Honor, this morning I read a letter with respect to Clatsop County. I would now like to read one with respect to Lane County.

This is Exhibit 44. It is a letter from Dr. Milton V. Walker of Springfield, Oregon. The letter is dated March 8, 1940, and is addressed to the National Hospital Association.

"Your letter of March 7th in regard to accepting National Hospital Association checks was received.

"In January of this year we wrote in regard to this matter explaining that due to the action of the Lane County Medical Society it would be no longer possible for us to accept checks directly from the Association. On January 19th we received acknowledgement from Mr. W. J. Page saying he appreciated the circumstances.

"I am truly sorry that this situation has arisen because my dealings with the National Hospital Association during the past nine years have always been most cordial. I have never received anything but the most courteous treatment and have no personal feelings in this matter whatever. The Medical Society has simply issued what practically amounts to an ultimatum that its members can no longer accept checks directly from your Association without being expelled from membership.

677 "Again let me express my appreciation for past favors and assure you of my continued endeavor to cooperate with you."

Mr. Kepner.

MR. TED KEPNER was thereupon produced as a witness in behalf of the plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Mr. Kepner, what is your occupation? A. Safety and personnel supervisor.

Q. For what company? A. Crown-Zellerbach.

Q. Does that company have a number of operations at present in the State of Oregon? A. Yes, we have four logging operations and two mills.

Q. Could you locate them, please? A. Logging operations at Seaside, one; two at Vernonia; three at Molalla; and the fourth is out of Gardiner, Oregon.

The Court: Where are your mills?

A. The mills are at West Linn and Lebanon.

Mr. Marcus:

Q. Has that company had these operations for some time? A. Yes.

Q. Does that company operate in other states?

678 A. We have two logging operations in the State of Washington.

Q. Are the products of your company shipped outside of the state?

Mr. Jaureguy: I object to that as immaterial.

The Court: Answer.

A. I understand that they do transport—

Q. Does the company receive supplies from outside the state? A. I understand they do.

Q. Mr. Kepner, how long have you been connected with the company? A. This is my sixteenth year.

The Court: Were you up here in that case we had from down at Lake Tahkenitch?

A. No, I wasn't, your Honor.

Mr. Marcus:

Q. In the position you hold, do you have occasion to come in contact with the problems of employees to a considerable extent? A. Yes, in our safety and personnel activities,

why, we practically make individual contacts as well as group contacts with them.

Q. Have those problems included—let me ask this question first: Does the Crown-Zellerbach Company carry prepaid medical care policies for its employees? A. Yes, we have two agreements in particular. I am only speaking, of course, for the timber or logging department.

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Q. Is that the one you are particularly connected with? A. That is the one I am directly connected with.

Q. Taking those locations you have mentioned, Molalla, Seaside, Gardiner and Vernonia, can you tell us whether those operations are covered by prepaid medical care policies and with whom? A. Yes. The three of them at Seaside and Vernonia and at Gardiner are under Industrial Hospital, and the fourth one at Molalla is under the National Hospital Association.

The Court: Do you pay anything on those or does the company?

A. No, they are fully paid by the employees.

Mr. Marcus:

Q. Now, among the problems that have been brought to your attention during the period you have been with the company—

The Court: Are those just for accidents on the job?

A. No, it is non-industrial for sickness or illness or accidental injury off the job. We carry State Compensation on the employees on the job.

The Court: Oh, this is outside of job injuries or illnesses?

A. That is correct.

Mr. Marcus:

Q. Among the problems that are brought to your attention by the men has the problem arisen of difficulties had with respect to doctors not accepting tickets of these Associations under which these prepaid medical care

680

policies are held? A. Yes.

Q. Has that been true over a period of time since you have been with the company? A. Well, my first recollection of it, I think, started about 1944, and particularly pointed itself in Clatsop County, was the original part.

And our employees then came to us and said that the doctors had refused hospital tickets, and they were interested in reimbursement, and at that moment of time then we became interested in securing the information, either an itemized statement through the employee or from his doctor, and in turn we submitted it to the Hospital Association for reimbursement.

Q. Has that meant more paper work on the part of the company? A. Well, that would be rather difficult to measure, when you consider the number of employees that we have at each logging operation is relatively small, and instances of hospital care would be, oh, maybe two or three cases a month I should judge. I wouldn't know for sure.

Q. You mentioned Clatsop County. Now, were similar complaints brought to your attention with respect to the company's operations in other parts of the state? A. Yes. We have experienced—in other words, we use the same system in practically every location. Today the employee submits an itemized statement, usually, and that oc-
681 curs in the other operations as well.

Q. In your experience, then, has the employee at times had to pay cash even though he had this Hospital Association contract of coverage, and then submitted the bill to the company and the company secured a refund? A. That is correct. There have been some cases of cash. The majority of them are on credit, of course.

Mr. Marcus: That is all.

Cross Examination

By Mr. Jaureguy:

Q. That is, some of the employees pay the doctor and then get reimbursement, and some of them send in the itemized statement and get paid by the Hospital Association and then pay the doctor; is that the idea? A. That is correct.

Q. Mr. Marcus asked one question and I am not sure that you agreed with him. Is that because they are compelled by the doctors to pay cash or is that just because it is convenient for them? A. Well, I still don't quite understand.

Q. Mr. Marcus asked you whether they were compelled to pay cash. I want to ask whether they paid before they got reimbursement because some doctor insisted they pay, or was it just for convenience for themselves? A. Oh, I couldn't say as to what happened there. Some fel-

682 lows would prefer to pay cash and get reimbursement, and some of them would go on credit, and as soon as they got reimbursement, why, they would pay the doctor. The number of those cases there were I couldn't say.

Q. You have got a lot of paper work in connection with your employees in other connections than this, I take it? A. Oh, yes.

Q. Just explain what some of the problems you have are where you have to have paper work. Social Security, I suppose? A. Well, certainly, we are interested in Social Security.

Q. Group insurance? A. Group insurance and retirement.

Q. Does the paper work in connection with the group insurance amount to more than what you have described here in connection with the Industrial and National Hospital? A. I never have measured the volume. We are primarily interested in seeing that the welfare of the employee under the contract is taken care of.

Q. You don't regard that as a particular burden on the company, this helping them to get reimbursement, do you? A. Our main and primary interest is, first, to see that the employee under the contract gets medical service, irregardless. That is No. 1. No. 2 is that under this situation that we have experienced to see that he gets reimbursement. That is our only two major objectives.

683 And the problem of reimbursement has not been any real burden on the company, has it? A. No, the hospital associations have been quite prompt in making that.

Q. Have the employees experienced any difficulty in getting these itemized statements from the doctors? A. Well, in some cases, naturally—I suppose the doctor is busy, or whatever the case may be, and we have to go back again and get an itemized statement.

Q. When you call it to the doctor's attention you have always got the itemized statement, haven't you? A. Well, we got satisfactory information.

Q. That is what I mean. A. That is our ultimate aim, is to get that reimbursement.

Q. Well, throughout these operations, say, at Molalla and down at Gardiner and these places, some of the doctors take tickets and some of them don't, isn't that true? A. That is right.

Q. You can't give us an estimate of the proportion that do and don't? A. Well, I could give you a little chronological history of the thing, particularly in Clatsop County. At one time none of them took them. Now, I understand that there is some are taking them.

Q. This problem in Clatsop County first came to
684 your attention in 1944? A. Well, it may have come earlier, but I wouldn't exactly specify the date.

Q. In 1944 all the doctors took tickets in Clatsop County, didn't they? A. Pardon?

Q. Before 1944 all the doctors took tickets in Clatsop County? A. I couldn't say as to that.

Q. But at the present time some of them are and some of them are not; is that correct? A. That is correct.

Q. And in the other parts of the state the same thing is true, isn't it? A. Well, in our small communities where we operate naturally there is usually one or two doctors—I mean there are not so many doctors as there would be in Portland. In Astoria there is quite a number of them.

Q. But in the smaller communities the one or two that handle the cases take tickets generally, do they not? A. No. I know there is one particular one that doesn't.

Q. That is down in Gardiner, I suppose? A. No, at Molalla.

Q. Where? A. At Molalla.

Q. Oh, at Molalla. Down in the Gardiner opera-
685 tions—that is at Lake Tahkenitch I take it—where do they generally go for their services? A. Well, the majority of them go to Dr. Dunne in Florence. However, we are getting some improvement in medical service at Reedsport, recently.

Q. A new doctor went in there recently, didn't he? A. So I understand.

Mr. Jauregny: That is all. Thank you.

Mr. Marcus: That is all.

(Witness Excused.)

Roscoe Hurst was thereupon produced as a witness in behalf of the Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Galassi:

Q. Mr. Hurst, are you resident here in Portland? A. Just outside the city limits in Portland, in Multnomah County.

Q. Would you state your residence address, please? A. 12133 Southeast Foster Road.

Q. I didn't get that. A. 12133 Southeast Foster Road.

Q. What is your present occupation? A. I am a sales-
manager for a concern out in Parkrose that manu-
686 factures school playground equipment.

Q. Have you ever been connected with the Industrial Hospital Association? A. Yes.

Q. About when? A. I entered into a contract with them in January of 1945.

Q. In what capacity were you associated with them? A. As sales manager for the individual certificate department.

Q. What do you mean by individual certificate? A. The concern up to that time of that contract had been selling individual certificates only casually, and they then decided to put in an individual department and engage actively in the procurement of individual and family membership.

Q. Will you please describe the nature of your duties in that position when you went there. A. I was to solicit individual and family memberships in the association and was to appoint agents anywhere in my discretion for the same purpose.

Q. Were you paid a salary or a commission? A. Strictly commission.

Q. Was your commission based on each contract that you succeeded in obtaining? A. Yes, on my sales.

Q. And how was that commission computed? A. There
was a flat rate of $6 per member, $3 of which was
687 payable with the application, $2 was payable with
the second month's dues, and $1 was paid with the third month's dues.

Q. Were you allotted a designated territory or area, or did you cover the entire state? A. I covered the entire state.

Q. Did you concentrate in any particular locality? A. Largely in Multnomah County.

Q. During the time you were connected with the Industrial Hospital Association did you find it difficult to solicit these individual and family accounts? A. Yes, it was very difficult.

Q. Well, what was the nature of these difficulties? A. The resistance directed at the Industrial Hospital Association by certain types of doctors, certain groups of doctors.

Q. By "resistance" do you mean—would you explain what you mean? A. Well, I just mean that they would do or say whatever was necessary about the Association to prevent the individual members from signing up with the Association.

Q. Did the matter of the doctors refusing to take the tickets of the Industrial Hospital Association come to your attention? A. Yes, practically, oh, over half the business I did in connection with that.

688 Could you tell us in just what way that would come to your attention? A. I would spend my time making contacts and getting applications. Then the parties with whom I was discussing the certificate would get, would become thoroughly satisfied, and they would say, "We have got just one thing we want to do, we want to consult our doctor before we sign," and I couldn't do nothing but say "Of course, that is all right." They would consult their doctors and they would come back with various excuses. "Your Association doesn't pay its bills; your tickets are not accepted by the doctors; my doctor belongs to another Association." And I would say, "OPS!"—"Yes, and they tell us not to sign," and that just about ended it. There wasn't anything you could say after a discussion of of that sort.

Q. Well, as a result of these difficulties do you think your job and your ability to sell those contracts was affected? A. I know very decidedly that it was.

Q. Can you cite any instances of actual loss of a contract or failure to sell one as a result of this attitude by the doctors? A. Yes. I don't recall the names of the applicants, but I remember that one group of five and one group of three and one group of two, which meant $60 to me if they signed, turned the contracts down on the express advice of their doctors. That happened in one day.

689 Q. In other words, as far as you were concerned, it meant a loss of $60 to you? A. It meant a loss of $60 to me on that special day.

Q. Because of the doctors' refusal to accept these tickets did you have to devote more time and effort to write a family or individual contract than would have been the case otherwise?

Mr. Jaureguy: I object to that as a leading question.

The Court: Answer.

Mr. Jaureguy: Now, this is a very intelligent witness. He doesn't—

The Court: Read the question.

A. May I have the question again, please.

(Pending question read.)

A. Very much more. Every time that these people would come back to me with a refusal, then I naturally would go to them and try to straighten them out if I could. I succeeded part of the time, but most of the time there was no use to talk to them further.

Q. Did you succeed in selling any contracts in spite of these difficulties? A. Yes, I sold contracts, but not enough to make a living.

Q. Well, as to those that you did manage to sell how were you able to convince those particular individuals to sign up with you? A. You mean the ones who had stopped to consult the doctors, or the ones—the general run of
690 applications?

Q. Well, in either case I assume that you were able to convince them with some reason or other that you weren't able to convince others. A. Well, I cited the differences between the two coverages; the OPS coverage and the Industrial coverage, and naturally I thought that I had the best coverage in the world, and I attempted to get it over to them.

Q. Do you recall what you stated were the differences between those two? A. The Industrial Hospital Membership could use any doctor of their own selection. They weren't even directed to a doctor. That gave them the whole field, any doctor in Portland. The only requirement of the Industrial Hospital Association was that the doctor be in good standing. The OPS requirement was that he belong to their association, and they deviated from that somewhat when there was a good man that they didn't want to turn down. The doctor in these cases is the captain of the ship. When a doctor takes charge the Industrial Hospital would have no control over him whatever. He could order what he wanted for the patient, he could send him to the hospital, he could keep him there as long as he wanted to, and the hospital had to give him what treatment was required. He got a complete coverage, and the doctor was in no sense interested in any saving that could be
691 made on his contract. The OPS contract called for the doctor to be in complete charge, as is proper, but

the doctor, a member of OPS, was financially interested in saving money on that patient because at the end of the month anything he could save went into the pot to be split between the members. And I called that to their attention. I called that to the customer's attention, and—

Q: How—

Mr. Jaureguy: Let him finish.

A. What?

Mr. Jaureguy: Counsel was going to interrupt you and I didn't—

A. Oh. And as a result of that I was able to sell some contracts. But I lost, I think, more than I sold.

Mr. Galassi:

Q. How long after you started in with the Industrial, was it, before you left them? A. I was there, oh, practically two years. I think I left in the late fall of 1946.

Q. And what was the principal reason for your leaving that position? A. The resistance that I was meeting from the members of the medical profession, largely OPS.

Mr. Galassi: That is all. Thank you. Your witness.

Cross Examination

By Mr. Jaureguy:

692 Q. Now, of course, you told the people you sold to that the doctors were not telling the truth when they said that the Industrial sometimes didn't pay their bills? A. I think very definitely that that was a fact.

Q. And you told them that the doctor when he is taking tickets for the Industrial he is the captain of the ship? A. He certainly was.

Q. He doesn't need to consult with Industrial at all? A. He what—the only restriction on him is that the Industrial had a right to put specialists on certain cases, either at his request or without, I think.

Q. And you got that information—the things that you told the prospects were matters that were told to you by Industrial, I suppose? A. What?

Q. Or did you get that from the contract? A. Which?

Q. The information, or rather the statements that you made to the prospects, did you get that information from somebody in the Industrial or did you read the contract

and get it from the contract? A. Well, I read the contract and I read my own contract, and then I proceeded.

Q. Yes. And that is what led you to believe that the doctor working for Industrial is the captain of the ship? A. Yes. And I know it to be a fact.

693 Q. Now, you say that after these members went to talk to the doctors, why, they came back with various reasons that the doctors gave why they shouldn't take the Industrial contract? A. Yes.

Q. And I suppose that some of these prospects that you talked to told you that the doctors they talked to had formerly been on the Industrial list? A. No, they didn't tell me.

Q. What is that? A. They didn't tell me that.

Q. Well, did they tell you where the doctor got his information about Industrial not always paying its bills and things of that kind? A. I didn't understand you.

Q. Did your prospects tell you where the doctor said he got his information that he gave them about Industrial? A. No. I wouldn't think of asking such a question, because the differences between the Industrial Hospital and National Hospital and the OPS was widely discussed all over the city.

Q. Widely discussed by whom? A. By these prospects. They all knew about it when I started to talk to them.

Q. Oh, they knew about it? A. Oh, surely.

694 Q. Even those that wanted to see their doctors? A. They what?

Q. What is that? A. They what?

Q. Even those that wanted to see their doctors, they knew about it already? A. They knew about it, yes, they knew about it.

Q. I don't understand whether you were pleased when they said they wanted to see their doctors or whether you were disappointed. A. Naturally in attempting to make a sale and knowing what their doctor would say about it, I would have been delighted if they had foregone a visit to the doctor.

Q. Yes. In other words, you felt you were in a better position to advise them with regard to their medical matters than the doctor would be? A. I didn't get to, if I was.

Q. What is that? A. I didn't get to advise them, if I was in a better position. All I could do was explain the merits of the different contracts according to my lights, which was what I did.

Q. Yes. But that isn't what I asked you. I asked whether you felt you were better qualified to speak to, to advise your prospects with respect to these important matters of medical care than their own doctors were. A. I wouldn't hardly say that. I expect their own doctors were in a better
695 position to advise them, just so he told the truth.

Q. Yes. But, you nevertheless were disappointed when they wanted to see their doctor? A. Yes, surely.

Q. Yes. Because it meant a loss of $6 to you? A. Many times a day.

Q. Many times a day? A. Many times a day, yes.

Q. And you were paid $6 for each member you got? A. What?

Q. If the member you got paid for three months, you got $6? A. $6, yes.

Q. Did you ever try to suggest to your prospects that it would unnecessary to see their doctors about it? A. They what?

Q. That it would be unnecessary— A. Never to one single customer.

Q. Did any of them come back and report to you that the doctor said that their experience with Industrial was that they had to get permission of Industrial before they had an operation? A. I don't think they did. I know the Industrial did reserve the right—

Q. What is that? A. I know the Industrial did
696 reserve the right to check on the progress of any case any time they wanted to.

Q. Oh. A. But that was for their information, but not any direction to be issued to the client, to the customer.

Q. You mean to the doctor? A. Yes.

Q. Not the client or customer? A. Yes.

697 Q. Well, did you tell these prospects if they took the Industrial's contract and the doctor bill was greater than Industrial's fee, they would only be reimbursed in part for their doctor bill? A. Yes, I always told them that. I tried to be honest with them and I had to tell them the facts.

The schedule of fees, I was informed in the office, paid by the Industrial was okehed and approved by doctors in the different departments, the different departments of medicine, and that those fees were prepared and submitted to those various groups of doctors and the doctors said, "Yes, they are fair."

Q. You mean submitted to the medical societies? A.

No, not to the medical societies, naturally; to various groups of doctors in the various departments of medicine.

Q. I see. A. And that the Industrial would pay up to those fees and that if there was any more, and they persisted in staying with the doctor that they had, the patient would have to pay the rest of the bill.

That was fully explained to everybody. There wasn't a person that ever signed any application but what—

Q. Did you explain to them that the opposite was the case with OPS? A. What?

Q. That that was not true with OPS? A. Natu-
698 rally I would not think that would be necessary.

Q. You did not mention that to your prospects? A. No, I didn't have any occasion to.

Q. In other words, you just told them about the undesirable features of OPS and the desirable features of Industrial? A. Well, after all, I was selling coverage.

Q. Selling? A. And I wasn't going to give anyone information which I didn't think he was entitled to, and I certainly did not think OPS and their service was entitled to the same consideration that the Industrial Hospital Association was.

Q. And for that reason, when you tried to sell a prospect, you would tell him only about the undesirable features of OPS and the desirable features of Industrial, is that correct? After all, you were after contracts.

Mr. Galassi: The witness has already answered that, your Honor.

Mr. Jaureguy: No, he went off on a little speech. It was a very good speech, but it does not answer my question. A. Now, what is the question, Nick? I will try to answer it.

Q. When you tried to sell a prospect an Industrial contract, you, as a salesman, would naturally mention the undesirable features of the OPS contract and the desirable features of the Industrial's contract? A. I don't know.

I wasn't selling OPS coverage, so, naturally, I would
699 advocate my own line, if that is what you mean.

Q. Of course, you understand what I mean. A. Yes.

Q. Your answer, then, to my question is Yes, that that is what you did? A. Yes, that is right.

Q. That is, you just told them of the undesirable features of OPS and of the desirable features of Industrial? A. Well, probably.

Q. Probably? A. Yes, that would be it; yes.

Q. I want to get back to this subject—rather, it is not a subject. I didn't know this before. The Industrial Hospital Association had submitted its various fee schedules to the doctors in various classifications and the doctors approved them? A. That was my understanding, out of the office, given me by Mr. Kirk and confirmed more recently by Mr. Brunkow.

Q. Was that a fee schedule, as you learned and told the prospects, a fee schedule that had been approved generally by the doctors? A. I don't think I ever told them that. I think I told them that the doctors—that the fees were made up and submitted to doctors in the various medical groups. That is, the skin specialists—

Q. Or the orthopedists? A. Pediatrics.

700 Q. Obstetrics? A. Yes, and the fees were made up—the fees which the Industrial would pay, they were made up and submitted to various groups of doctors and okehed as fair.

Then there was the further provision that in any unusual cases which required extra care that the fees would be increased to meet the emergency.

That was my understanding, had very definitely before I went out to contract—to sell.

Q. Is that your understanding of the contract, or is it your understanding of what Industrial told you? A. That is what Industrial told me.

Q. They told you that they had this agreement with the doctors? A. Did what?

Q. That they had that type of agreement with the doctors in the various groups? A. I didn't say that.

Q. Oh, I didn't understand. A. I said that they told me that these fees had been prepared and had been submitted to groups of doctors in the various medical departments, and that they had been approved as fair by those doctors.

Q. That is, a group of obstetricians, of diagnosticians— A. Yes.

701 Q. A group of internal medicine men? A. Yes.

Q. A group of pediatricians— A. Yes.

Q. I am not sure of my pronunciation. A. Obstetricians are eliminated because the contract would not cover pregnancies.

Q. A group of each of those in Portland? A. Yes.

Q. And that, when submitted to a group, the group had agreed to the schedule, and that they had also had some kind of an agreement with Mr. Kirk—

Mr. Galassi: That is not what the witness said.

Mr. Jaureguy: I am asking a question.

Q. And that they also had an agreement with each of these groups that in any unusual case the Industrial would chip in a little more? A. No, that wasn't what was agreed on by groups. That was the practice of the Industrial Hospital Association.

Q. That was the practice? A. Yes.

Q. It was not an agreement? A. That was the practice of the Industrial Hospital Association.

Q. And you told all that to your prospects? A. Surely. We also told them, Mr. Jaureguy, about their right
702 to consultation, if they needed it, and of Industrial's agreement to pay for it.

Q. Did you tell them, also, the Industrial reserved the right to compel consultation? A. Undoubtedly I did. It was never a secret matter. That was to dispose of malingerers, I take it. Industrial, like OPS, gets malingerers on their contracts, on their roll or on their list, I mean. If at any time Industrial felt that a certain member was a malingerer, they had the right to call a doctor to check him.

Q. You mean a member, a patient? A. Yes.

Q. Among these reasons that the doctors gave the patients and that the patients passed on to you, was there any other reason that the doctors gave your prospects about why they should not take Industrial's coverage? A. Yes, some of them said OPS didn't pay its bills.

Q. What? A. Some of them said Industrial didn't pay its bills.

Q. I mean any additional reasons besides those you have given? A. No reason at all.

Q. Did some of them say they had to get authorization to do things from Industrial, at the expense of Industrial? A. No, I don't think they did. I don't think that was a fact in emergencies; anything that required imme-
703 diate action was given, of course, and paid for.

Q. Did you tell them the names of the specialists the Industrial would send them to? A. No, I never did, because, as far as I was concerned, we had no list of doctors except the governing board of medical directors. I personally never referred a patient or sent a single patient to a doctor and, as far as I am concerned, I don't know that the office ever did. I don't know that. I don't think—I don't say it did not happen. I say I don't know it.

Q. You don't know it? A. No. I never was instructed by anybody in the Industrial Hospital Association office to recommend any doctor to any person.

Q. After you had sold your contract, your duties were over? A. Well, of course, they would ask me about whom they should see occasionally.

Q. This $6, was that a fee that was paid by the patient? A. No, that came out of the dues.

Q. The dues were how much? A. The dues were, I think, $3 a month at that time. Anyway, my initial pay was $3.

Q. The first month's dues? A. And $2 out of the second month's dues, and $1 out of the third.

Q. Were your sales restricted to any income limit?

704 A. None whatever.

Q. You mean you could have come to me and sold me a policy—of course, I am in the low-income group, but to John, here, for instance? A. If I could make a thousand dollars a month—

Q. What is that? A. If I could make a thousand dollars a month, it was all mine. I didn't have—

Q. I didn't mean that. Certainly I understand that, but I mean, did you have the right to go and sell one of these individual or family contracts to the president of a big bank who might be getting forty or fifty thousand a year? A. Any place, any person in the county.

Q. Any person in the county? A. In the county.

Q. Or in the state? A. In the state; the whole Northwest, for that matter.

Mr. Jaureguy: That is all.

Redirect Examination

By Mr. Galassi:

Q. With respect to these accounts that you succeeded in selling, did you ever hear of any difficulties in connection with the payment of bills by Industrial? A. Never. In my whole experience I never had but one claim that Industrial Hospital Association did not pay its bills.

705 I was about to appoint a general agent at Reedsport and I was talking to the man on the street, and a man came up and joined the conversation. He happened to be the undertaker down there.

I told him that I was with Industrial Hospital Association and was going to appoint this man an agent and he

said; "You wouldn't appoint him an agent if you knew what I know about them."

The Court: Don't go into that.

A. All right.

The Court: Any further questions?

Mr. Galassi: That is all.

The Court: All right, then.

(Witness excused.)

The Court: I have to take up another matter and we will recess this case until 2:00 o'clock.

(Thereupon a recess was taken until 2:00 o'clock P. M.)

AFTERNOON, SESSION

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Court reconvened at 2:00 o'clock P.M., October 26, 1949.

Mr. Marcus: Your Honor, I wonder if I might inquire about Monday, just so I can let the witnesses know whether to appear on Monday or Tuesday.

The Court: Do you gentlemen want to work on Monday?

Mr. Jaureguy: I have other work I would like to do Monday.

The Court: You mean the answer is no?

Mr. Jaureguy: The answer is yes, I want to work, but not here in the courtroom.

The Court: All right. No Monday, then.

Mr. Marcus: I would like to clear up the record with respect to one exhibit, and that is Exhibit 1004. That consists of one of the minutes of the Lane County Medical Society and there was one page missing. We asked Mr. Jaureguy to look for that missing page, and I would like to read into the record his answer, merely for the purpose of clearing up the fact of that missing page, since there is part of the first page which we are very much interested in and the carry-over does not appear.

"On examining the minute book of Lane County Medical Society, starting on page 41, I find that that page is the only page containing minutes of April 15, 1937. Page 42, being the opposite side of the same sheet is blank,
707 and page 43 begins with the minutes of April 28, 1937."

Mr. Jaureguy: I have the minute book here, I can show it to him if he wants to see it.

Mr. Marcus: I don't dispute that in any way. I just want to clear up the record, because I don't want to be charged with concealing any part of an exhibit.

EUGENE MILLER was thereupon produced as a witness in behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Mr. Miller, what is your occupation? A. Business agent and financial secretary of IWA Local 307, Roseburg, Oregon.

Q. How long have you held that position? A. Since July, 1947.

Q. In that position do you come in frequent contact with the men? Do they bring to you their problems? A. Yes, sir; all problems.

Q. In that area, Mr. Miller, do the concerns in that area carry medical care insurance? A. They do.

Q. Would you say that most of the members of
708 your union are covered by such insurance? A. They are, approximately all of them.

Q. Now, referring to group contracts, what organization holds most or all of the contracts in that particular area? A. Oregon Physicians' Service.

Q. To your knowledge do some of the members of the union have individual contracts with the National Hospital Association? A. Yes, they do.

Q. Have there been expressions of discontent among the men, to your knowledge, with respect to OPS coverage? A. Yes, there has been considerable discontent.

Q. What is the position of the union with respect to prepaid medical care insurance in that area with respect to whether or not they want to continue with OPS or whether

or not they would like to deal with other hospital associations? A. Well, we would prefer—when I say "we" I am speaking of the people I represent—would prefer very much to be able to sign a contract with any hospital association and be covered by the doctors on that ticket.

Q. What is the reason, if there is any reason that you know of, why the members do not attempt to have group contracts with other hospital associations in that area?

Mr. Jaureguy: I object to that as hearsay.
The Court: Answer.

A. The doctors refuse to accept any other ticket.

709 Mr. Marcus:

Q. Do I gather, then, it is the position of the union down there that they would like to at least have the opportunity to negotiate with various organizations which handle prepaid medical care insurance?

Mr. Jaureguy: I object to that as a leading question.
The Court: Answer.

A. That is correct.

Mr. Marcus:

Q. On a free competitive basis? A. That is correct.

Mr. Marcus: That is all.

Cross-Examination

By Mr. Jaureguy:

Q. "On a free competitive basis." What do you mean by the answer you gave to the question, "on a free competitive basis"? I don't quite understand that. A. Well, I mean that I was covered myself as an individual, and I worked with hundreds of people that were covered in the County of Grays Harbor in the State of Washington where we had two competing medical associations, and through negotiations on a competitive basis we were able to establish coverage that not only gave us the right to go to the doctor, but it paid all medicines and everything else. In other words, these people didn't have to pay another penny. I was paying $3.00 a month and getting complete coverage. We are paying $3.50 a month and merely get the opportunity to go to the doctor, and he writes a prescription, and

710 we have to pay for the fulfillment of the prescription. A competitive basis would give an opportunity to get better coverage.

Q. What about the National and Industrial? Do they pay for the drugs and the prescriptions? A. They do not.

Q. They don't. So that National, Industrial and OPS are the same in that respect? A. I don't believe there is any difference in the type of contract they write.

Q. I am sorry, I didn't get the part of Oregon where you were. A. Roseburg.

Q. Roseburg? A. Douglas County.

The Court: What is the name of your union?

A. International Woodworkers of America, CIO.

The Court: CIO. That is the sawmills down there?

A. Sawmills and loggers.

Mr. Jaureguy:

Q. We had a representative of the Clatsop County area this morning. Were you here when he was on the stand? A. I was here all morning. I don't recall. You can't hear very well.

Q. Oh, no, that was yesterday. You were not here yesterday were you, when he was on the stand? A. No,

711 I wasn't.

Q. Did you know that down in the Clatsop County area they all have either Industrial or National Hospital Association, all the logging concerns? A. I am not familiar with any area in Oregon with the exception of Roseburg and in that vicinity.

Q. Have you investigated how they handle the problem in other districts such as Clatsop County by having the doctor give itemized statements, and then the man getting reimbursement or getting paid by National or Industrial? A. I have not. I know what happens down in Roseburg on an itemized statement, though.

Q. You say you do know what happens. A. Pardon?

Q. You say you do know what happens there? A. Yes, sir.

Q. Do you have a policy with the National or Industrial? A. One camp that is no longer in existence did have a policy wth the national. I don't know of nay with Industrial.

Q. I had in mind you personally, whether you had an

individual contract. A. No; I have an individual contract in our office with OPS.

Q. For yourself personally you mean? A. Myself and the office girl.

Q. But some of the men, you say, have individual con-
712 contracts with Industrial and National? A. With National. I don't know about Industrial.

Q. Are they satisfied with them? A. They appear to be.

Q. How long have they had them, do you know? A. Several years. I can't answer that. It is people that formerly have worked up and around Portland or the Columbia Basin area that had carried National coverage for many years, and they came down into that area and are still carrying it due to the benefits that they accumulate over a period of time on chronic ailments, and so forth.

The Court: Does that cover their families?

A. To my knowledge, there is no family coverage.

The Court: The $3.00 a month?

A. Oh, no, no. $3.50 covers merely the individual.

Mr. Jaureguy:

Q. Those that you know of down there that have the individual contracts with the National, do they seem to be satisfied with them? A. They appear to be, yes.

Q. How many logging concerns are under your jurisdiction, do you know? A. Well, there is about eleven different companies, which would cover approximately seventeen operations.

Q. How long have they had OPS coverage, do you know? A. I couldn't answer that. As I say, I am not familiar with
713 anything prior to the time I went there in July of '47, and they were covered then, the majority of them.

Q. So you just know about it for a little over two years, then? A. Yes.

Q. You say they don't like OPS? A. They don't. In fact, I might go a little farther, if I would be allowed, that in two or three of the different operations that the crew very definitely told me that if they could get the doctors to accept other tickets they would get out from under OPS. The reason they are maintaining it is because the doctors will not accept any other ticket.

Q. But is it your understanding that under a National contract the men cannot get the benefits of the contract unless the doctors accept the tickets? A. That is correct.

Q. That is your understanding? A. That is correct. That is the truth. They can't get the benefits.

Q. You didn't hear the president of the National testify and the president of the Industrial testify here on the stand, then, to the contrary?

Mr. Marcus: I object to that, your Honor. He didn't testify to the contract. Let the record speak for itself.

The Court: I guess he wasn't here, then. You haven't been here all the time, have you?

A. No, I have not. I merely came in this morning.

714 Mr. Jaureguy: Well, of course, Mr. Marcus is mistaken on that, but at any rate you have never discussed that with the men or with the National or Industrial? I say, you have never discussed with the National or Industrial whether it is necessary for doctors to take tickets in order for the men to get the advantages of the contracts with National or Industrial? A. I discussed with Mr. Bechtold—I believe he is the head of the National.

Q. Yes. A. —several months back the question of tickets. And I was told by Mr. Bechtold that at any time the doctor would not accept a ticket for the individual to go ahead and pay the bill and submit the bill to the National, and they would be reimbursed. However, the individual must pay the bill before he can get an itemized statement. The doctor refuses to give an itemized statement until the bill is paid.

Q. Which doctor, Mr. Miller? A. Any of the doctors down there.

Q. What is that? A. Any of the doctors down there; all of them.

Q. You say they have? A. That is correct.

Q. In Roseburg? A. In Rosebeurg. After the bill is paid, the employee is reimbursed anywhere from forty per cent up on the bill. They never get the full
715 amount back. That is why we are not satisfied—one thing.

Q. That is with the National you are talking about? A. That is correct.

Q. In other words, the doctor's charges are more than the National schedule? A. I don't know what the doctor's charges are. I know we never get the money back; that the individual has to pay for the coverage.

Q. Then the objection, as I get it, seems to be that when they go to the doctor, why, when they pay the doctor's bill, then they only get a portion of reimbursement from the National? A. They get a portion—

Q. Just part of the reimbursement? A. That is correct. The same thing holds true on OPS, too. I might as well qualify that.

Q. What do you mean? A. In certain cases.

Q. What do you mean "the same thing holds true on OPS"? You mean that in OPS they get an itemized statement and send it in for reimbursement? A. In certain cases, yes.

Q. Is that so? A. Prior to just recently the Dental Association accepted OPS tickets for extractions,
716 and the last few weeks they have withdrawn from that. I have had two different occasions to write into the OPS to try to collect bills people had to pay, and I was reimbursed part of the amount of the dentist's charges. I wasn't given the full amount back.

Q. Dentists, yes. A. That is correct.

Q. Would you say the same thing is true with doctors on the OPS? A. No, with the physician himself, the medical part the doctors are accepting the OPS ticket.

Q. So the workman doesn't have to pay any part of their doctor bill? A. That is right, with the exception of their medicines.

Q. I misunderstood you, Mr. Miller. A little while ago I undestood you to say that if a man under OPS went to a doctor and got services he got an itemized statement and was partially reimbursed, but I misunderstood you there. A. Well, that is right. The doctor takes the ticket.

Mr. Jaureguy: That is all. Thank you.

Redirect Examination

By Mr. Marcus:

Q. Just a minute, Mr. Miller. Do you regard a member of the union who has a prepaid medical care contract is getting the full benefit of that contract when he has to pay cash and then wait for a refund? A. I do not.

717 Mr. Jaureguy: I object to that as immaterial.

The Court: Sustained. Strike the answer. That is all, Mr. Miller.

(Witness Excused)

Mr. Marcus: Your Honor, at this time I would like to point out a part of our case about which very little will be heard during the actual trial. I would like to do that by reading one paragraph from the minutes of the House of Delegates of December, 1940, which appears in the Northwest Medicine.

The Court: What is the exhibit number?

Mr. Marcus: The exhibit number is 281.

The Court: The date?

Mr. Marcus: The date of the particular meeting of the House of Delegates is September the 6th, and the date in which it appears in the Northwest Medicine is just December of 1940.

"The policy and program adopted by the House of Delegates provides that each approved local organization shall limit its activities to territory embraced within the jurisdiction of the local society by which it is approved, except that upon the request of a neighboring local society the council may authorize the extension of the activities of a local organization to the territory of the petitioning society.

"During the past year upon request by the local societies involved, arrangements were completed by which the
718 Multnomah Service Bureau of Portland was authorized to extend its activities to the territory embraced by the Mid-Columbia Medical Society and the Central Oregon Medical Society. Upon a similar petition to the Council the Physicians & Surgeons' Hospital Association of Salem was authorized to extend its activities to the territory under the jurisdiction of the Tillamook County Medical Society and Lincoln County Medical Society."

Earl C. Plummer was thereupon produced as a witness in behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Weinstein:

Q. Mr. Plummer, with what company are you associated? A. Roseburg Lumber Company.

Q. What is your position? A. Secretary.

Q. How long have you been with the company? A. About seven years.

Q. Does your company send lumber all over the country? A. It does.

Q. Do you have any employes who live outside of Oregon? A. We have a branch in Los Angeles.

719 Q. Do you receive supplies from outside of Oregon? A. We do.

Q. Are the employees of Roseberg Lumber Company covered by any prepaid medical care plan? A. They are.

720 Mr. Weinstein:

Q. What plan is that? A. National Hospital Association.

Q. How long have they been with the National? A. Since 'thirty—I think about '36.

Q. During the time that you have been with the company has your attention ever been called to doctors refusing tickets or refusing to cooperate with the National Hospital Association? A. Yes.

Q. Has your attention been called to doctors refusing to give itemized statements? A. Yes.

Q. What procedure has the Roseburg Lumber Company adopted to handle these accounts where the doctors refused to cooperate? A. We were forced to ask the employees to pay the bills in cash and then they came down to the office and the National Hospital had a cashier, who was also our timekeeper, who had a checkbook and issued a voucher of reimbursement so that the employee wouldn't be at the disadvantage of having to wait a considerable amount of time for the bill, reimbursement.

Q. And this necessitated more paper work for the company than would otherwise have been the case had the doctor cooperated? A. Very much so.

Q. Is the timekeeper who is also the cashier for the National Hospital, is he the timekeeper for Rose-

721 burg Lumber, is that right? A. That is right.

Q. Well, then, has this business caused you—I will reframe that. Has this required additional clerical time, then? A. Yes, considerably.

Q. Has this difficulty had any effect on the men; that is, on the crew? A. Yes, a lot.

Q. What effect? A. Well, the men were all dissatisfied with the way the medical program was working out. We had a lot of grievances, innumerable grievance committees and meetings about it and had to spend a lot of time trying to convince the boys that National Hospital was

the best coverage and they should stay with it; and, well, we used the argument very effectively with them that it was our opinion that OPS was trying to eliminate competition, that they were, in their labor practices, in the competitive field and if they eliminated competition in their field, why, certainly it would be a detriment to them to eliminate the competition in the medical aid plans.

The Court: Mr. Plummer, this covers injuries and illness off the job, doesn't it?

A. Yes, sir; twenty-four hours a day.

The Court: Off the job?

A. On and off the job.

The Court: Oh, you had that kind of a contract?

722 A. Yes, wherever they are, twenty-four hours a day.

The Court: You mean you have a contract with National that is in lieu of the State Industrial Accident Commission coverage?

A. We carry private coverage. We don't carry State Industrial Accident coverage. We carry our industrial coverage with private companies.

The Court: Somebody else?

A. Northern Life Insurance Company and Lloyd's of London, both. But the National have the medical aid plan on the 24-hour basis.

The Court: Well, I know. I just don't want to discuss it in phrases. Industrial accidents are covered by your insurance policies with other people?

A. Right.

The Court: In other words, those people agree to take care of your men injured in the industry in the same way and to the same extent that State Workmen's Compensation provides?

A. Only as far as compensation is concerned.

The Court: Only the money part of it?

A. Only the money.

The Court: Not the hospitalization or medical care?

A. No. That is by National Hospital.

The Court: As well as sickness and accidents off the job? That is what you mean by accidents off the job?

A. Yes, sir.

723 Mr. Weinstein:

Q. You are Secretary of the lumber company? A. Yes, sir.

Q. In your opinion has the company's ability to do business been hindered by this doctor's attitude? A. Well, it is very hard to say. I think that it has complicated our employee relations and it has hurt the morale of the crew. We recently, in the last few years, started a new mill and the efficiency of that crew is considerably below the status of the crew we had on the old mill and has just recently got to the point where we really have an efficient crew. All these different grievances which you encounter have a bad effect on trying to organize—

Q. And is this one of the main grievances, this in the hospital coverage—

Mr. Jaureguy: I want to object to that as a conclusion of the witness and a leading question.

The Court: He may answer.

Mr. Weinstein:

Q. Did you get the question? A. No, I didn't.

Q. I say, is this one of the main grievances that has come up, this hospitalization insurance? A. Yes. It has been as frequent as any.

Mr. Weinstein: I would like to have this marked for identification.

(Sheaf of correspondence bearing date August 27,
724 1948, so produced, was thereupon marked for identification Plaintiff's Exhibit 1892.)

Mr. Weinstein:

Q. Mr. Plummer, I am showing you the Plaintiff's Exhibit No. 1892 and I ask you whether or not that was taken from the files of the Roseburg Lumber Company and regularly kept there as a part of their business. A. It was.

Mr. Weinstein: Your Honor, I would like to offer that in evidence.

The Court: Admitted on the same terms as the other.

(Plaintiff's Exhibit No. 1892, previously marked for identification, was thereupon received in evidence.)

Mr. Weinstein: I would like to call particularly to your Honor's attention the date and two paragraphs in one of these letters, and should I summarize in general what this sheaf of correspondence is?

The Court: Just tell me instead of reading it.

Mr. Weinstein: The date is August 27, 1948. It is a sheaf of correspondence of an employee of the Roseburg Lumber Company who wanted to know whether or not a certain operation which the doctor said he had to have would be covered by National, and he was told by National that although it was not covered by his contract that they would help him out. The operation was performed. The doctor gave the patient a statement for $175, and
725 he subsequently billed the National for $200, and the National wrote to the doctor and asked him whether or not this was a mistake or whether it was his intention to charge National $25 more than the statement to the patient. I haven't the reply.

Mr. Jaureguy: The answer is not in their file, not in their exhibits, nor is the bill, either bill.

Mr. Weinstein: Your witness.

Cross Examination

By Mr. Jaureguy:

Q. Does Mr. Bechtold or National Hospital Association have any interest in your mill? A. No, sir.

Q. Have they ever? A. No, sir.

Q. Did they ever finance it for you? A. No, sir.

The Court: Why do you ask that? Are there instances where that has been done?

Mr. Jaureguy: Well, I had heard it was done in this case and that is the only reason I asked it.

Q. You have been there how long? A. I went there in November of '42.

Q. '42? A. Yes, sir.

Q. You don't know whether prior to that time Mr.
726 Bechtold had ever financed the mill? A. No one has ever been interested.

Q. No one has. I am just mistaken, then. I understand— Do the men want OPS; is that it? A. No, sir.

Q. They don't want OPS? A. No, sir.

Q. So that you haven't had to advance any arguments to them to keep National instead of going to OPS? A. Why, we have had to advance arguments; yes, sir. They—

Q. Oh, you mean they did want OPS until you argued them out of it, is that it? A. That is right.

Q. That is right. This case where the exhibit has been marked, that is an exceptional case where the doctor sent the bill to National, then, isn't it? A. Oh, up until recently it wasn't very usual for them to send a bill to National. Most of them, even today, are cleared through our office.

Q. Cleared through your office? A. Yes.

Q. And do the men have any difficulty getting reimbursement from National? A. No, sir.

Q. They are reimbursed right there at your plant?

727 A. No. We discontinued that.

Q. Oh, you discontinued that? A. We lost our timekeeper and we couldn't find anybody with the ability to handle the volume of work, and so we went back to our old system of just forwarding the bills in to National, having to write a letter of transmittal and keeping a file so that we could tell the man that the bill was in process, or give him—or have a reason why reimbursement was slow, or something like that.

Q. You say reimbursement was sometimes slow? A. They were.

Q. About how long would it take National to reimburse after they got the bill? A. If they received a proper bill from the doctor they were reimbursed within, I would say, on an average of about ten days.

Q. Well, didn't your cashier or timekeeper check the bills when they came in to see if they were proper? A. Yes.

Q. Well, then, wouldn't they always be proper by the time she sent them in? A. No.

Q. You mean she would check them but sometimes would send in improper bills? A. They were not itemized.

Q. Not itemized. Well, of course, sometimes the

728 doctor wouldn't know whether a man was under National or not. A. We are not so large down there but what if a man tells him he works for Roseburg Lumber Company he knows they are under National Hospital.

Q. He knows that? A. Yes, sir.

Mr. Jaureguy: That will be all.

Mr. Weinstein: That is all.

Mr. Jaureguy: Oh, by the way, I did have one other question.

Q. Is Mr. Miller, Eugene Miller, is he the business agent of the union that has jurisdiction at your plant? A. No, sir.

Q. That is another— A. We are A. F. of L.

(Witness excused.)

Mr. Marcus: Mr. McKay, please.

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729 JAMES McKAY was thereupon produced as a witness in behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Mr. McKay, what is your occupation? A. Vice-President of the Columbia River District Council No. 5, International Woodworkers of America.

Q. And where is that located? A. The business office is at 710 Southeast Grand Avenue.

Q. Now, could you tell us what that District Council comprises, the area and what unions are included in that Council? A. Well, there is twenty-six local unions which extend from Longview, Washington, south to Cottage Grove; from the Pacific Coast to the summit of the Cascade Mountains; and they are loggers and sawmill workers.

Q. Mr. McKay, how long have you held your present position? A. I was elected in July of 1948.

Q. And were you connected with that Council prior to that time? A. Yes, I was.

Q. And will you tell us about how long you have been connected with the Council and in what capacity. A. Well, since 1937—not continuous—in '37 as a delegate from the local union up until about '39, and then again in '41, and then I went on as an organizer for the
730 District in '44, and then as business agent from the Springfield-Eugene area from '45 until '47.

Q. Now, Mr. McKay, with respect to your connection with the District Council, have the member unions brought to the District Council's attention complaints with respect to doctors refusing to accept tickets of their members when those members were covered by hospital associations? A. Yes, at many times.

Q. Now, preparatory to a question I am going to ask you I am going to read something from the proceedings of the Sixth Annual Convention of the Oregon State Industrial Union Council, CIO, Roseburg, Oregon, January 7th, 8th, 9th, 1944—

Mr. Jaureguy: I object to Counsel reading it. It isn't in evidence.

Mr. Marcus: It is.

Mr. Jaureguy: Oh, it is?

Mr. Marcus: This is from Exhibit 1804.

Mr. Jaureguy: Then I will object to it, that it isn't proper to just read something to a witness and ask him if it is true or false.

Mr. Marcus: That is not the question I am going to ask him.

Resolution No. 39, The Oregon Medical Society.

"Whereas,"—

The Court: What is this gentleman's name?

Mr. Marcus: McKay.

731 The Court: Mr. McKay, do you notice how much louder he is talking how than he was a few minutes ago? All right, that is what I want you to do in your answer.

Mr. Marcus: "Whereas, it appears that under pressure from the Oregon State Medical Society a number of physicians and surgeons practicing in Oregon have been induced to refuse treatment to sick and injured employees"—

The Court: Has he read that over lately?

Mr. Marcus: Yes, he has.

The Court: So have I, so you don't need to read it. Just ask the question you want to ask him about it.

Mr. Marcus:

Q. The question I want to ask you, Mr. McKay, is whether the source of that resolution was a resolution passed by the District Council with which you are connected.

Mr. Jaureguy: Object to that as incompetent, irrelevant and immaterial.

The Court: Answer.

A. Yes, it originated out of our District Council.

Mr. Marcus:

Q. Now, Mr. McKay, are you yourself and are any members of your family covered by prepaid medical care— A. I am.

Q. —Contracts? A. I am covered by National Hospital.

Q. Now, could you relate to us any experiences you may have had, if any, with respect to not having a ticket
732 of that Association accepted by doctors. A. Yes. On February the 16th, 1949,—

Mr. Jaureguy: I want to object to that as long subsequent to the filing of this complaint.

Mr. Marcus: Your Honor, this is an equity case. Of course, your Honor would want to know, I suppose, what it was doing now as well as twelve or fifteen years ago.

The Court: He may have a point on you. You might have to file a supplement complaint. You can prove damages up to, in a damage case, up to the time of trial, but I don't know whether you can prove things like this. But, go ahead subject to the objection.

A. On February 16th, 1949, I was attacked with pains in my hip and legs. I went to a doctor in Lebanon. I was in Lebanon at the time. And I received treatment from that doctor on a National Hospital ticket. That evening I returned to my home in Oregon City and the pains got worse and I called Dr. Steele—or the wife called Dr. Steele. He came out.

Q. Where is he located? A. In Oregon City. He come up to the house and gave me some kind of a shot, a hypo or something—I don't know what you would call it—and the pain continued to be there, so the wife called Dr. Lee Strickland in Oregon City and made arrangements for to be taken to the Hutchinson Hospital.

I went into the hospital at approximately 11:30
733 and Strickland attended me the following morning.

I told them both, the hospital and Strickland, that I carried National Hospital coverage. There was nothing said about it any more at that time.

Eight days later, through a request and through Strickland's diagnosis, I was supposed to have had a rupture in my spinal column, causing a disk, and I asked to go to Portland. He said he didn't have the facilities there to take care of it, so I went to Dr. Kimberley in Portland.

Again, I told Dr. Kimberley and also the Good Samaritan Hospital that I was covered by National Hospital.

When I got a bill from Dr. Steele and also one from Dr. Strickland, I again called them and told them that I thought it was covered by National Hospital tickets. I also thought that they understood it because Dr. Strickland was there when I was discharged from the Hutchinson Hospital and the nurse at the desk says, "It is pretty nice when you have got prepaid hospital." I agreed with her that it was very handy, at least.

The Court: They wouldn't have let you out otherwise, is that the idea?

A. I imagine you would have to be prepaid before you got in.

The Court: I often wondered about that.

Mr. Jaureguy: They have a lien on the patient, I think, your Honor.

Mr. Marcus: That must be Oregon law.

734 A. Regardless, when I still got the bill I asked again what the reason for it was and he said he didn't recognize National Hospital tickets, so I told him that as far as I knew the hospital hadn't said anything about it; I didn't get any bill from them and I thought it was covered. I didn't actually pay very much attention to it, any more attention to it, and a short time later I got another bill, and this time I took the trouble to go down to the office and talk to Dr. Strickland, and again I was told that he did not recognize the National Hospital, that I would be able to pay the bill and he understood there was some arrangement where I could be reimbursed by them.

I asked for an itemized statement and when I got the itemized statement it said, "Eight daily visits to the hospital," and that was supposed to be an itemized statement, I guess.

I then took it in to National Hospital and, after some discussion with them up there, they asked me if that was an itemized statement and I said, "That is what the doctor give me as one," and a check was made out to me and I later paid Strickland for it, but it was a long ways from being prepaid medicine, in my opinion.

(Copy of letter dated September 6, 1949, Eugene Hospital and Clinic to A. Gurney Kimberley, M.D., Portland, Oregon, was thereupon marked Plaintiff's Exhibit 1893 for Identification.)

Mr. Marcus:

Q. I show you Plaintiff's Exhibit 1893 marked
735 for identification, and ask you whether that is a copy of a letter sent to your brother? A. That is correct. It is.

Q. Are you the person referred to in the last paragraph? A. That is correct. I am.

Mr. Marcus: I would like to offer that letter in evidence.

The Court: Whom is it by?

Mr. Marcus: It is by the Eugene Hospital and Clinic. It was sent to Dr. Kimberley, with a copy to this gentleman's brother, and the last paragraph states: "It is at the insistence of his brother that surgery be performed in Portland, which is permissible when he accepts the charges on a private basis."

Mr. Jaureguy: I am rather puzzled what the purpose of it is. Here is the Eugene Hospital and Clinic writing to Dr. Kimberley and making that statement. It does not say that it is National or Industrial or OPS.

The Court: Have him explain.

Mr. Marcus: It is merely to show—

The Court: Is it the same case?

Mr. Marcus: No, it is not. This refers to his brother.

Mr. Jaureguy: That is last month, your Honor.

The Court: That is about something else?

Mr. Marcus: Yes, your Honor.

The Court: Not about his care by Dr. Kimberley?

Mr. Marcus: No. It is about his brother.

736 The Court: Admitted, subject to the objection.

(Carbon copy of letter heretofore marked Plaintiff's Identification 1893 was thereupon received in evidence and marked Plaintiff's Exhibit No. 1893.)

(Plaintiff's Exhibit 1893, referred to above, is as follows:)

"Sept. 6, 1949

"A. Gurney Kimberley, M.D.
2455 N. W. Marshall
Portland, Oregon

"Dear Doctor:

"We have this date learned that Glen D. McKay—Culp Creek, Oregon, is desirous to have surgery performed by you.

"Mr. McKay has been advised to the need of a laminectomy by Dr. F. J. Wooliever and under the terms of our medical coverage plan with his employer, he is entitled to hospitalization and surgery when it is done here.

"It is at the insistence of his brother that the surgery be performed in Portland, which is permissible when he accepts the charges on a private basis.

"Very truly yours,

737 "EUGENE HOSPITAL AND CLINIC

J. E. Jackson
Assistant Office Manager

"JEJ:rc
"cc: Glen D. McKay
Culp Creek, Oregon
W. A. Woodard Lumber Co.
Cottage Grove, Oregon."

Mr. Marcus: That is all.

Cross Examination

By Mr. Jaureguy:

Q. I may not have followed you correctly, but, as I got it, you had four different doctors, the doctor in Lebanon, Dr. Steele, Dr. Strickland and Dr. Kimberley? A. That is correct.

Q. How many did you get bills from? A. Dr. Steele and Dr. Strickland.

Q. So it is fifty-fifty there; two doctors sent their bills to National and two doctors sent their bills to you, is that it? A. I only got bills from two of them.

Q. Only from two. The other two either are not being paid or are being paid by National, I take it? A. I can only answer to the two I got. I got bills from two of them.

Q. You did not get any bill from the hospital,
738 either? A. No.

The Court: There were two hospitals, one in Oregon City and one in Portland.

Mr. Jaureguy: Two hospitals and two doctors.

The Court: Did Dr. Kimberley do that operation on you, Mr. McKay?

A. Yes, he did.

Mr. Jaureguy:

Q. Was this one bill from Dr. Steele and Dr. Strickland, or two bills? You told us about the Strickland bill but not about the Steele bill. A. A $6 bill from Steele and a $24 from Strickland.

Q. Then you took them both up to the National and they paid you the amount of them? A. That is correct. They were taken at different times but I had to take them both up there.

Q. Then you paid the two doctors that same amount? A. I paid the doctors, I believe, actually before I was reimbursed by the National Hospital.

Q. I thought you said you paid Dr. Strickland after you got paid by them, but you paid him before? A. I don't recall whether it was before or after, but I did have to pay the bill.

Q. You got service from the doctors; that is, Dr. Steele went out there at night to your home and gave you a shot?

A. That is right.

739 Q. That is all he treated you, just that one night?

A. That is right.

Q. And Dr. Strickland visited you eight days at the hospital? A. That is correct.

Mr. Jaureguy: That is all.

(Witness excused.)

Mr. Marcus: Your Honor, I want, from time to time, to refer to the individual defendants who are likely to get lost from the trial, and for that purpose I would like to read one paragraph from Exhibit 313, the minutes of the Council of the Oregon State Medical Society of June 26, 1937:

"Letter from Charles E. Hunt, Councilor for the Third District, was read. Dr. Hunt expressed regret that he was unable to attend the meeting and outlined the result of the efforts of the Benton County Medical Society and the Lane County Medical Society to eliminate unethical contract practice.

"He further pointed out in the letter that progress was being made in eradicating undesirable practices in Polk and Marion Counties, and that the Central Willamette Medical Society was also working on the problem. Dr. Hunt predicted that all unethical contract practice would

be eliminated from his entire district by January 1, 1938."

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740 Mr. Marcus: I will call Mr. Peschl.

A. W. PESCHL was thereupon produced as a witness on behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Mr. Peschl, what is your occupation? A. I am a timekeeper.

Q. With what company are you connected? A. I am with the Columbia Hudson Lumber Company of Bradwood, Oregon.

Q. Is that a subsidiary of any other company? A. Well, I think it is a subsidiary of the J. C. Turner Lumber Company of Irvington, New York.

Q. Was there a predecessor to the Columbia Hudson Lumber Company with which you worked? A. Yes, there was.

Q. What was the name of that company? A. There was a Bradwood Lumber Company and a Bradley—Prior to that it was the Bradley Lumber Company.

Q. Does that company ship its products to other states? A. It does.

Q. Does it get supplies from other states? A. It
741 does.

Q. Does that company carry prepaid medical care insurance for its employees? A. It does.

Q. Are any of the employees of that company residents of the State of Washington? A. Well, we have two there that live across the channel of the Columbia River and it puts them on the Washington side.

Q. Could you tell us with what organization the company carries prepaid medical care insurance? A. The Industrial Hospital Association.

Q. Have the employees of your company, to your knowledge, had difficulty with respect to doctors accepting tickets of the Industrial Hospital Association? A. Yes, they have.

Q. Mr. Peschl, is there a doctor located in Bradwood? A. No, there isn't. He comes down there—we have a doctor that comes down to Bradwood, however, for about an hour twice a week.

Q. Where do the men or most of the men go to get their medical treatment? A. Most of them go to Astoria or to Clatskanie.

Q. How far is Astoria? A. Astoria is approximately 26 miles from Bradwood.

Q. In that area, in the Astoria area, do the doctors accept Industrial Hospital Association tickets gen-
742 erally? A. None that I know of.

Q. What method does the company adopt to take care of servicing these medical care contracts when the doctors do not accept tickets? A. Well, the patient or the employee comes into the office and we write him out a ticket. He takes the ticket with him to the doctor and the doctor gives him service, of course, and if he pays the bill, why, he brings the receipted bill back to me in Bradwood, and I take this receipted bill and send it to the National—or the Industrial Hospital Association, and get the money back or refunded to him. If he does not pay the bill, I take the bill and send it in to the Industrial Hospital and they write a check to the individual and he gets the check, endorses it, and sends it to the doctor in Astoria.

Q. Has it been your experience that there has been any difficulty in getting itemized statements, where a doctor refuses to accept tickets? A. Very seldom, unless specifically requested. If a doctor makes an itemized statement, all it shows is Dr. So-and-So, and the bill is $50 or $100 or $200, and that is all it shows.

Q. Does that system of servicing these accounts mean more paper work, as far as your company is concerned, than would otherwise be the case? A. It certainly does. When a bill like that comes in, Industrial don't like to pay it unless they know what it was for, and I have to send that
bill back to the doctor or tell the employee to take
743 it back there and have it itemized.

(Recess)

Q. Mr. Peschl, has this system of taking care of the medical bills for the employees of the company resulting from the doctors' refusing to accept tickets occasioned much extra effort on your part? A. Well, yes, it does. It increases my work because the employees seem to think that

since we are collecting their dues and everything for the Industrial, that we are agents for them, and that any work that is done it is my work to do, and they bring everything back to me, and I do the letter writing for them.

Q. To your knowledge, has the Industrial set up any agency in Astoria to facilitate the payment of certain types of bills where the doctors refuse to take tickets? A. Yes, they have. The Van Dusen Agency in Astoria, I think, takes care of the bills. They will take care of them if the employee goes there, but usually they come back and say they didn't have time to go there and bring them back up to me.

Q. Are the employees of the company discontented as a result of the doctors refusing to accept tickets, their paying cash and then having to wait for a refund? A. Yes, they are quite discontented about it. They think that when they take the ticket and go down there with it and present it to them, that it should be paid.

Mr. Marcus: That is all.

744 Cross-Examination

By Mr. Jaureguy:

Q. I understood your testimony that sometimes they bring in a bill that has not been paid? A. Yes, they do.

Q. There is no doctor that insists that they pay the bill at the time they get the services, is there, in Astoria? A. I don't know. I have never heard of anybody saying that.

Q. So far as you know, when the man pays the bill he does it voluntarily prior to getting paid himself? A. I think so; I don't know, but I think so.

Q. Yes. Then if they go to Astoria they can go down the street to the Van Dusen Agency and get it taken care of right away? A. Yes. They tell me if it isn't over $25.00.

Q. If it is not over $25.00? A. If it isn't over $25.00.

Q. I suppose most of them are under $25.00, aren't they? A. Well, most of them are, but occasionally we get some that are fifty and seventy.

Q. And I think you said that unless an itemized statement is requested sometimes the statement is not itemized? A. That is right.

Q. But if the itemized statement is requested, then it is itemized in the first instance. That is it, isn't it?

745 A. It probably would be; I don't know.

Q. You say a doctor comes down to your plant once or twice a week? A. He is supposed to come there about twice a week. One day he comes there between twelve and one, and then one other day—I think it is on a Thursday or Friday—he comes there between five and six.

Q. Where does he come from, do you know? A. Westport.

Q. What doctor is that? A. His name is L. L. Bauer.

Q. How are his services taken care of? I mean payment for them. A. Well, he accepts the tickets.

Q. He takes tickets? A. Yes, he will take tickets.

Q. Which means he looks at them and then sends in a bill himself? A. He sends in his bill himself, and that is all we hear about it.

Q. Is he on salary, do you know, or does he get paid on a fee basis? A. That I don't know, whether he gets a salary from the Industrial or gets a commission or what it is; I don't know.

746 Mr. Jaureguy: Thank you.

(Witness excused.)

Ray Davis was thereupon produced as a witness in behalf of the Plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Mr. Davis, what is your occupation? A. Millwright.

Q. With what company? A. Columbia-Hudson, Bradwood.

Q. That is the same company the previous witness testified to? A. Columbia-Hudson.

Mr. Jaureguy: Will you give us that name again.

A Columbia-Hudson Lumber Company of Bradwood, Oregon.

Q. How long have you been working with them? A. Well, they changed hands about three times since I have been there, but I have been there since about fourteen years now.

Q. Have you been an officer of the union down there? A. Yes, sir; I have been in '47 and '48.

Q. Could you tell us what offices you held and
747 with what union? A. Well, president of CIO Local 532, and I was also president a short time of AF of L 2674 before we changed over. I have been a charter member all the way through.

Q. About how large is the membership of Local 532? A. 147 members at the present time.

Q. Was that substantially the number during the period you were president of the local? A. That is right.

Q. Are most of the members of the union covered by prepaid medical care insurance? A. That is right.

Q. That is with the National Hospital Association? A. That is the National.

Q. Now, calling your attention to the year 1947, was a union meeting held in Westport, Oregon, at which Dr. Straumfjord attended? A. That is right. Dr. Straumfjord was representing the OPS from Astoria.

Q. Can you tell us what occurred at that meeting? A. Well, they just outlined the kind of a setup they could give us in behalf of their organization, and where we could better ourselves.

Q. Was the suggestion made as to any conditions or terms under which the contract could be made with
748 the Oregon Physicians' Service? A. say that again.

(Last question read.)

A. Yes, there was. I don't remember exactly how they stated that.

Mr. Marcus:

Q. Could you tell us your recollection of what they wanted before an OPS contract could be entered into?

Mr. Jaureguy: I object to that as assuming something not in evidence.

Mr. Marcus: Well, he testified Dr. Straumfjord was there as a representative of the OPS.

Mr. Jaureguy: I know, but he has not testified about what you are assuming to have been in evidence.

The Court: Read the question.

(Last question read.)

The Court: Answer.

A. Well, they figured that we could make a better progress by taking over with them than we could with the Industrial.

Q. I am talking about Dr. Straumfjord and the representatives of the OPS. What did they want to do? Did they suggest anything as a condition to entering into an OPS contract? A. Yes.

Q. What was that? A. Well, they figured that they would get that set up the way we wanted it.

749 Q. Have you yourself had occasion to be treated by doctors in Astoria? A. I was refused myself by Dr. Kleger.

Mr. Jaureguy: I am sorry. I didn't hear.

A. At Astoria, Dr. Kleger.

Mr. Jaureguy: What about him?

A. I say, he refused my ticket, my medical ticket. I went there for sinus.

Mr. Marcus:

Q. About when did that occur? A. That is about six months ago.

Q. To your knowledge is that the general situation in Astoria with respect to doctors accepting or not accepting tickets? A. That is right. In my position as president of the local I had several complaints in the meetings where they refused tickets in Astoria.

Q. And that has been a matter of discussion at union meetings? A. That is right.

Mr. Marcus: That is all.

Cross-Examination

By Mr. Jaureguy:

Q. In 1947, you say, Dr. Straumfjord of Astoria attended a meeting at Westport? A. That is right.

Q. And that was a union meeting? A. Well, it was a meeting for the three representatives of Wauna, Westport and Bradwood, that committee of each local.

750 Q. Oh; it was a small meeting, then, a small group.

A. Well, we were representing the whole bunch.

Q. Yes, I understand. And then were representatives of the National Hospital Association and the Industrial Hospital Association present, too? A. I don't think there was at that time.

Q. Just Dr. Straumfjord representing the OPS? A. Yes.

Q. And he tried to sell you on the idea of taking OPS? A. Please?

Q. He tried to point out what he considered to be the advantages of OPS and wanted you to take an OPS contract; it that it? A. Yes.

Q. And then at other times somebody from the National came down and tried to convince you you ought to have a National contract? A. Well, we already was in with the National,—or with the Industrial.

Q. It was Industrial, then? A. Yes. We still are.

Q. I thought you said you were National now. A. Industrial.

Q. You have the Industrial Hospital Association? A. Industrial, yes.

751 Q. Not National? A. Not National.

Q. Then somebody from National tried to convince you you ought to be shifting over to the National? A. No, we quit the National.

Q. When did you quit them? In 1942? A. Well, we had been in Industrial for about four and a half years, I guess, and I think the main reason was on account of so many complaints about not accepting the tickets. That is the reason we went out.

Q. You figured if you took the Industrial Hospital more doctors would take the tickets? A. That is right. It was up to the rank and file to decide what they wanted.

Q. Was the reason for shifting to the Industrial Hospital because they thought that more doctors would take Industrial Hospital Association tickets? A. I guess that is what they figured.

Q. That is what they figured. Did it work out that way? A. Please?

Q. Did it work out that way? A. No, it didn't. They still refused, continued.

Q. What is that? A. They continued to refuse.

Q. Could you tell me whether there are more or fewer doctors who took the Industrial tickets than took

752 National tickets?

Mr. Marcus: I would like to have him ask that question with respect to a particular time. If he is asking it as of now, I don't object; and if he asks as of some other time, I would like to know the particular time.

Mr. Jaureguy:

Q. Since you switched from Industrial, whenever that was, were there more doctors then that took tickets of

Industrial than before had taken tickets of National? A. Well, to my judgment they are about the same.

Q. About the same. The doctors? A. The same doctors, yes.

Q. What about Dr. Van Dusen? A. Well, Dr. Van Dusen, I guess he is, he had interest in one of the associations. I don't know what the setup was, but we had to go down there, that is, the members went in there to receive their money, had a receipt and would get their money back down there if they paid cash.

Q. Well, does he take tickets of either of the Associations? A. Van Dusen?

Q. Dr. Van Dusen. A. Well, I don't know. Not from me.

Q. How is that? A. From me, you mean?

753 Q. No, from your men. A. Well, I didn't question that.

Q. You don't know whether Dr. Van Dusen takes tickets of the Industrial Hospital Association? A. I think he did.

The Court: He is deceased, Mr. Jaureguy.

Mr. Jaureguy: Dr. Van Dusen?

The Court: Yes.

Mr. Jaureguy:

Q. He took tickets. Did he take tickets of the Industrial Hospital Association? A. If I remember right, I think he did.

Q. What other doctors took tickets in Astoria? A. What other doctors took tickets in Astoria?

Q. Yes, in Astoria, from either Association. A. Oh, I —Dr. Jasper took tickets.

Q. Jasper took tickets? A. Yes.

Q. Who else? A. Oh, there is Dr. Fowler, I guess, is one.

Q. There are two doctors Fowler. Both of them, or just one of them? A. Well, I suppose both of them, because they are both located in the same place.

Q. Who else do you recall that took tickets from either of these hospital associations? A. Well, I don't remember whether the rest of them, right offhand had.

754 Q. You couldn't name any others either that did or didn't is that it? A. No, I wouldn't make no statement that wouldn't be true.

Q. That is correct. A. I don't want to make no false statement.

Q. No, I don't want you to. But what I am getting at

is that you cannot now recollect with respect to the other doctors, any particular one of them, as to whether he does or does not take tickets; is that what you mean to say? A. That is right. I have had several complaints, and when they came in there, they just go up in an uproar until I have to call order, and that is the way it goes.

Q. Their complaint is that they think the doctors ought to send the bill to the hospital association instead of having their patient do it? A. Well, after all, there is no reason why that the doctor shouldn't accept those tickets.

Q. I say, the complaint is that they think the doctor ought to send the bill to the hospital association instead of them doing it themselves, is that it? A. That is right.

Mr. Jaureguy: That is all. Thank you.

Mr. Marcus: I would just like to have the record show that Dr. Moore testified that Dr. Van Dusen was a
755 stockholder in the Industrial Hospital Association.

The Court: That is all.

(Witness excused.)

Mr. Cohen: Mr. Mete.

Tony Mete was thereupon produced as a witness in behalf of plaintiff and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Cohen:

Q. Mr. Mete, where do you live? A. Medford, Oregon.

Q. And what county is Medford in? A. Jackson county.

Q. How long have you lived in Medford? A. Off and on since 1920.

Q. Are you in business in Medford? A. Yes, I am.

Q. And what is your business? A. I have a Hudson Dealership in Medford, Oregon.

The Court: A what?

A. Hudson Dealership, Hudson Car Dealership.

The Court: Automobile?

A. Yes.

756 Mr. Cohen:

Q. Do you own this business? A. Yes. I am in partners.

Q. Who is your partner? A. My brother.

Q. How many men do you employ? A. Eleven.

Q. Are you and your men covered by any prepaid medical care plan? A. We are covered by National Hospital and Industrial, State Industrial.

Q. You carry both? A. Yes.

Q. How long have you been covered under the National Hospital Association plan? A. A little over two years.

Q. Well, do you or any of your employees travel out of Oregon to Michigan to pick up new Hudson cars? A. Well, not very often. My brother just finished a trip from Detroit and brought a new car back, which is going to be used as a demonstrator.

Q. Is your brother covered under this medical plan? A. Yes.

Q. National Hospital Association? A. Yes.

Q. How often would you say he makes these trips
757 to Michigan, or do you make these trips to Michigan? A. Very seldom. We have most of our cars come in by rail.

The Court: What is the freight now, about?

A. Pardon?

The Court: About how much is the freight?

A. $283 a car.

Mr. Cohen:

Q. Has the National Hospital Association required that the men covered by this policy go to any particular doctor? A. No, they can choose any doctor they wish.

Q. Well, have you or your employees had any difficulty with doctors refusing to accept NHA tickets? A. Yes.

Q. Have you personally had any occasion to get medical attention under your NHA coverage? A. I have.

Q. Will you tell the Court about this occasion. A. Well, in—about a year ago, or a little over, I guess, why, Dr. Lemery—

Q. May I have that doctor's name again. A. Dr. Lemery.

Q. Do you know his initials? A. I am sorry, I don't.

Q. Where is he located? A. He is located in the Medford Center Building, Medford, Oregon.

758 Q. You may proceed. A. I went up there for a throat irritation, and he gave me a shot of penicillin,

and as I stepped to the office girl and showed her my National Hospital ticket, she immediately said that she did not accept National Hospital, so I asked her for a statement, and she gave me a bill, and I immediately paid her the amount that they asked for and in turn went to the National Hospital across the street and was reimbursed fully for what I had paid to the doctor.

The Court: When was this?

A. It was in 1948.

Mr. Cohen:

Q. Does the National Hospital Association, did they have an office at that time in Medford? A. Yes, they did.

Q. And you went to that office? A. I did.

Q. And after paying the doctor cash for a visit you were then reimbursed by the office of the National Hospital Association? A. That is right.

Mr. Cohen: Your witness.

Cross-Examination

By Mr. Jaureguy:

Q. The girl didn't insist you pay cash? A. Well, how else would you pay it?

Q. Well, I mean, she didn't insist that you pay 759 right at that time? A. Oh, no.

Q. No. A. No.

Q. I wasn't referring to money, I was referring to the cash transaction deal. A. Yes.

Q. And that is the only experience you have had with your ticket for a long time? A. Yes.

Q. Well, you haven't been sick, then? A. No, I haven't.

Q. You have had your Hudson Dealership for how long? A. Since April this year.

Q. Well, how long have you been an employer? A. I have been in the automobile business since 1946 in the same location.

Q. As an employer? A. Yes.

Q. And during that time have your men always been covered by National? A. Only for two years.

Q. Two years. And they would go to any doctor they wanted to in Medford? A. They can, yes.

Q. And have you ever had any trouble getting
760 reimbursed for doctor bills to National? A. As far as I know they haven't, no.

Q. Do you know whether any of the doctors in Medford are taking tickets? A. That I do not know.

Mr. Jaureguy: All right. Thank you.

Mr. Cohen: That is all.

(Witness excused.)

Mr. Marcus: Your Honor, we have run out of witnesses.

The Court: Don't do that again.

Mr. Marcus: We will try not to, your Honor.

The Court: Well, don't do it. Fill the courtroom up with them if necessary. I have to sit around for half an hour now.

(Whereupon the court transacted other business)

Mr. Marcus: Your Honor, perhaps you would like to know that Mr. Jaureguy and we are in substantial agreement as to a time schedule as long as it meets your Honor's approval; and that is, that I have gotten in touch, that is I have sent a wire to New York asking that our office down there arrange to have this hearing I am involved in during the first week in December. I think that very probably will go through. Now, if it does I am agreeable to having a recess through the first week of December.

Mr. Jaureguy: Oh, I understood, Mr. Marcus, that when you, if you rested, if the Government rested prior
761 to that time then we were going to have to work on your—

Mr. Marcus: Oh, yes. Before we rest we will file a statement indicating the parts of documents offered in evidence, and the purposes for which they are offered, and I understand that Mr. Jaureguy two weeks before we return will have filed his objections, if he has objections.

Mr. Jaureguy: So when the Government rests, then we take a recess until about the middle of December?

Mr. Marcus: Through the first week of December.

Mr. Jaureguy: All right, through the first week, December the 8th.

The Court: Why don't you try to finish your case this week, Mr. Marcus?

Mr. Marcus: We do have the difficulty of getting the witnesses, your Honor. Some are working out in the woods

and we just can't get ahold of them.

The Court: My question was, why don't you try to finish this week?

Mr. Marcus: Well, we certainly are trying, your Honor. We have been making telephone calls all over in an attempt to get them.

The Court: All right. Adjourned.

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762 The Court reconvened at 10:15 o'clock A.M., Thursday, October 27, 1949.

Mr. Jaureguy: If your Honor please, pursuant to your Honor's direction I am handing to counsel for the Government correspondence relating to Philip E. Pemberton, the only matter being a letter of 1944; also, minutes of the Council of the Multnomah County Medical Society in 1943, and, while they only asked for 1943 and '44, we found minutes in the Council for October, 1946, that applies to the matter, and we are handing them that also.

Also, pursuant to your Honor's directions, we have produced into Court all the correspondence and transcripts relating to Doctors Shields and Beck, and in this case, as in one of the other cases, the transcript also includes other doctors, but I felt that it was impractical to try to take it apart so I am giving them the entire transcript.

The Court: Call your first witness.

Mr. Jaureguy: I would like the record to also show that I have disclosed to counsel of the Government the matters that were suggested yesterday.

Mr. Marcus: Dr. Ullman, please.

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763 E. V. Ullman was thereupon produced as a witness in behalf of the Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Dr. Ullman, in what states are you qualified to practice? A. Oregon and Washington.

Q. And how long have you been practicing? A. 1925.

Q. And are you a member of the Oregon State Medical Society? A. Yes.

Q. And since about when? A. 1926.

Mr. Jaureguy: I didn't get that date, I am sorry. A. 1926.

Mr. Marcus:

Q. Prior to the commencement of the recent war were you connected with the Oregon Medical Service Bureau? A. Yes.

Q. And later with the Oregon Physicians' Service, that is, prior to the war but after the— A. Yes.

Q. Oregon Medical Service was— A. It was called differently, wasn't it?

The Court: A different name he says. That name is not familiar to me.

Mr. Marcus:

764 Q. I guess it was the Multnomah—was it the Multnomah Medical Service Bureau? A. Right.

Q. Pardon me.

The Court: That was the one with Dr. Dammasch?

Mr. Jaureguy: That was Dammasch's.

Mr. Marcus:

Q. Now, when you were a member or cooperating physician with the Oregon Physicians' Service, did you have a bond with them? A. Yes.

Q. Now, when the war broke out did you go into the armed services? A. Yes.

Q. And what occurred just prior to that time with respect to your being a cooperating physician in OPS and with respect to the bond? A. If I remember right correctly the members of the organization then were notified that if they went into the services it was optional with them to leave their bond with the organization or to cash the bond, with the understanding that they would be reinstated and can put up their bond again when they return to take up, resume their practice.

Q. What did you do? A. I chose to trade the bond for cash.

765 Q. I see. And at that time did you get a letter from anyone stating that you would when you got back from the war service be able to get back into the OPS?

Mr. Jaureguy: I object to that as not the best evidence.

The Court: We will get the letter. Go ahead. What happened?

A. I have no recollection that I received a letter in writing, but I have definite recollection that that was done with the understanding that we would be reinstated without any dues when we returned from the services.

Mr. Jaureguy: I move that be stricken as a conclusion of the witness.

The Court: He will have to tell whom he talked with.

Mr. Marcus:

Q. Does the name of Dr. Besson have a meaning to you in that connection? A. Yes. About six or eight months after I was in service—

The Court: Well, whom did you have this understanding with before you went in the service?

A. With the Oregon Physicians' Service, its president.

The Court: Who?

A. Dr. Besson.

766 The Court: Then, after he was in the service five or six months, he was about to tell something. Weren't you?

A. I was in the service five or six months, stationed in Salt Lake City, when I received a letter from Dr. Besson whether I would give him my proxy vote to settle some business of the organization, of which I have no recollection at this time.

The Court: Do you have the letter?

A. No.

The Court: You lost it or misplaced it?

A. Presumably lost with my affairs in the Army.

Mr. Marcus:

Q. When did you get out of the Army, Doctor? A. I began my terminal leave in January, 1946, and got out—was discharged from the Army in March, 1946.

Q. Did you have occasion in 1946 to go back to the offices of the Oregon Physicians' Service to see whether you

could take up where you had left off as a cooperating physician? A. Yes.

Q. Whom did you see there at that time? A. I went to the office and I saw Mr. Harvey Marshall or Marshall Harvey—I can't remember—or I saw both. It was Mr. Harvey and Mr. Marshall.

Q. What took place at that time? A. As I went up to the office, I was welcomed and I received a hearty welcome. I was asked to join them and to fill out a paper in which my credentials, previous membership and
767 office work was to be put down, and when I put down that my office was with the Permanente Foundation I received the cold shoulder and was told that under the circumstances I can't be accepted back into the organization.

Q. Are you still connected with Permanente Foundation? A. Yes.

Q. Could you tell us something about that Foundation? A. Permanente Foundation was founded while I was absent in the service. It was founded by the Kaiser organization for the purpose of setting up an expedient medical service for the thousands of shipyard workers who at the time, as far as I am informed, the OPS or the doctors of Oregon could not serve efficiently because of the difficulties of workers seeking medical help in various offices far away from the shipyard, causing a great deal of time lost, so Mr. Kaiser, with the assistance of his medical director, or, medical adviser, rather, Dr. Garfield, created an organization which was called or got later the name of Permanente Foundation, and was organized for the sole purpose of giving expedient medical service to the shipyard workers and their families.

Q. At the time you became connected with the Foundation, did it have offices and a hospital in Vancouver, Washington? A. At the time I became connected with it, in late December, 1945, the Foundation was in a period of transition. The war was over. There was still, I believe,
30,000 men working in the shipyards which had to
768 be taken care of; within the next six months the status of their subscribers became less and less and the question arose whether to close the organization which had done its duty during the war or finding a way of transition into a business service in which the idea of prepaid medicine could take its place.

After many discussions and meetings with the physicians, with the board of trustees, and with Mr. Edgar Kaiser, Henry Kaiser, Dr. Garfield it was decided to continue; but, since Vancouver was too small a community to make full use of their very large and beautiful hospital, the Foundation built during the war, it was decided to build a clinic in Portland, which was done, and the Clinic was completed March, 1947, at which time we began servicing plan members in the Portland area.

Soon thereafter the incident with Vanport came up in which the Oregon—I think it was the Medical School or the Oregon Physicians' Service canceled the contract with the Government on the Vanport Hospital.

The Medical Society and the Medical School were running the Vanport Hospital, which was also a wartime creation. They canceled their contract so that the then 16,000 or 17,000 inhabitants of Vanport were left without medical aid, and Mr. Kaiser and his staff were approached by the Federal Government whether or not they would take over the service of the Vanport Hospital, which they did, and the Government leased the Vanport Hos-
769 pital to the Foundation for one dollar a year, and we went into Vanport until the flood, and since then we have practiced in Portland as well as in Vancouver, but have reorganized the whole business in that the physicians now are entirely independent from Mr. Kaiser and the Foundation.

The physicians of the Permanente group in this area have formed a cooperating partnership and now lease the facilities, that is, the Vancouver as well as the Portland facilities, from the Kaiser Foundation for a set rental fee. Before servicing the health plan, we received an agreed-upon percentage of the health plan.

Q. Does the Foundation have subscribers in Washington and Oregon? A. I beg your pardon? I didn't hear.

Q. Does the Foundation then have subscribers both in Washington and in Oregon? A. Yes.

Q. They can use either the facilities of the clinic in Portland or the hopital facilities in Vancouver? A. Yes. We have out-patient facilities in Vancouver, too, and, since we serve a large amount of people in the North Portland area, many find it more convenient to go to the Vancouver offices rather than come to the Broadway Clinic.

Our patients are shuttled back and forth by two cars and an ambulance, wherever they need to go for the quickest and best service.

770 Mr. Marcus: I have adopted Mr. Jaureguy's example of reading telephone books, and I would like to call your Honor's attention to the fact that both the Permanente and the Doctors' Clinic have the same phone number and there is a notation that if there is no answer to call an Atwater number in Vancouver, Washington. I just want to bring that out to show that there is this situation of Vancouver and the Portland areas being a part of one area. I think your Honor can take judicial notice that the Atwater number is a common number in Portland.

Mr. Jaureguy: I want the record to show that while I accept the matter of reading telephone books, the rest of the matters, I have not done that.

Mr. Marcus:

Q. While you have been with Permanente, have you had occasion to treat OPS patients? A. Yes.

Q. Have you sent bills to OPS? A. Yes.

Q. Have they paid you? A. No.

Q. Could you name some of the doctors who are associated with you in the Doctors' Clinic in Portland? A. Some or all?

Q. Well, about how many are there, just in round numbers? A. I think about seventeen.

The Court: Where is this clinic?

771 Mr. Marcus: North Broadway, I think.

Q. Where is the clinic? A. Well, the staff of the Doctors' Clinic is at present thirteen members.

Q. His Honor wanted to know where the Doctors' Clinic is located? A. 26th and Broadway, on the East Side.

Q. In Portland? A. 2606 Northeast Broadway is the address.

Q. Is Dr. Lucius Button one of the doctors associated with the Permanente staff here? A. Yes.

Q. Is that true, also, of Dr. Lucius Hacker? A. Lucy Hacker. It is a lady.

Q. And Dr. Joseph Schaefer? A. Yes.

Q. To your knowledge, has Dr. Lucius Button applied for membership in the local Medical Society? A. Yes.

Q. Did you endo[illegible] that application? A. Yes.

Q. About how long ago, would you say? A. I believe it was eighteen or twenty months ago.

Q. To your knowledge, has he been admitted as a member?

Mr. Jaureguy: I object to that as hearsay, your
772 Honor.

The Court: How do you know about this, Doctor? How do you know personally about it?

A. Because the man asked me to endorse him.

The Court: Yes, but you do not know personally whether he is admitted or not, except from what he told you, except from what Dr. Button told you?

A. Right.

The Court: Sustained.

Mr. Marcus: Your Honor, of course, the records of the defendants would show that. As your Honor knows, we have asked them for a list of the members, and we have had a girl copying the list but it is going to be quite a job.

Mr. Jaureguy: That is what I warned you it would be.

Mr. Marcus: We wanted you to do it.

The Court: It is your belief he is not a member? Is that your information?

Mr. Marcus: Yes. I am told we did receive a list from the defendants, giving the names of doctors who have been denied membership and Dr. Button's name is on the list.

Mr. Jaureguy: No, that is not quite correct. Dr. Button's name, if it is on a list, is on a list which we gave them of doctors who have applied at any time for membership and membership has not been approved. That is not the same as saying that they have been denied membership.

The Court: Is he a new man, Dr. Button?

773 Mr. Jaureguy: I don't know.

The Court: What is your information?

A. Dr. Button came from Michigan about two and a half years ago.

The Court: He is—Is he a young man?

A. He is a young man, a war veteran, and has been a member of the Michigan State Society.

Mr. Marcus:

Q. Did you endorse the application of Dr. Schaefer? A. Yes.

Q. Do you regard, as a result of your association with Drs. Schaefer and Button, that they are qualified physicians? A. Yes.

Q. About when did Dr. Schaefer make application for admission to the local Medical Society? A. Much more recent.

The Court: Much more recent.

A. Much more recent. I am not capable of telling the date, but maybe a year after Dr. Button applied.

The Court: Is he another young man?

A. Yes.

The Court: And a new man, I take it?

A. Yes.

Mr. Marcus:

Q. How about Dr. Lucy Hacker, about how long has she been practicing here, to your knowledge? A. At
774 least four years; at least four years, but—

Q. Do you regard her as a qualified physician?

A. Yes.

Mr. Marcus: That is all.

Cross Examination

By Mr. Jaureguy:

Q. You have been a member of the Multnomah County Medical Society for twenty-three years? A. Yes.

The Court: Before you get into that, let me ask all of you a question. What are the requirements for admission to practice in Oregon? Do they make application to practice before the Board of Medical Examiners, people who are recent citizens? Are they something like lawyers coming from another state?

Mr. Jaureguy: I do not think the requirements are so detailed in the case of doctors as in the case of lawyers. The matter of whether they will be admitted is under the jurisdiction of the Board of Medical Examiners. That is about all I can tell your Honor offhand.

The Court: I assume these people practicing in other states were admitted to practice in other states. If they were lawyers, under our statute, which is the same as the

statutes in a great many of the states, they must have practiced for three years in other states.

Mr. Jaureguy: Within the last five.

775 The Court: Three years within the last five. Are these people you have spoken of admitted to practice in this state?

A. Yes.

The Court: All right.

Mr. Jaureguy:

Q. You have been a member of the Multnomah County Medical Society for twenty-three years? And of the State Medical Society? A. Ever since.

Q. Your right to membership has never been threatened in any way? A. No.

Q. Do you attend meetings? A. Yes.

Q. You say there are thirteen doctors in the clinic at Permanente? A. In the Doctors' Clinic, yes.

Q. Yes. Have you attended meetings of the Multnomah County Medical Society with them? A. I am the only member—I and my associate in my specialty are the only members in Multnomah County. The rest of the men, as far as they could get in, are members of the Clark County Medical Society on the other side of the river.

776 Q. I see. And these three that you have named, are they members of the Clark County Medical Society? A. The three?

Q. Doctors Button, Hacker and Schaefer? A. No, sir.

Q. They don't belong to— A. No, it is the rule that no physician can belong to more than one medical society in one state.

Q. Now, these three you have mentioned are not members of the Clark County Medical Society? A. No, they are not.

Q. They are not. One of them made application eighteen months ago and the other one a year later, as I recall what you said. A. Dr. Button made an application about eighteen or twenty months ago, and Dr. Hacker about the same time or earlier; Dr. Schaefer much more recent, maybe six months ago.

Q. And the thirteen of you doctors have your offices in the Permanente Clinic? A. In the doctors' clinic at 2606 Northeast Broadway.

Q. That is the Permanente Clinic, is it? A. That is the building built by the Kaiser Foundation, by the Permanente Foundation.

Q. Yes. And is it devoted to Permanente activities?
A. Yes.

777 Q. Now, this Permanente, counsel referred to it as a Foundation. It used to be a Foundation, but now it is a partnership? A. Except the health plan is the Foundation.

Q. The what? A. The health plan.

Q. The health plan is the Foundation? A. Is the Foundation. They have their own offices, accounting offices, soliciting offices, insurance offices and what have you, and the doctors' clinic is a group of practicing physicians who serves with this group.

Q. But they are a partnership? A. Yes.

Q. Their offices, the sales offices are in the same building at 26th and Broadway? A. No.

Q. Where are they? A. In Vancouver.

Q. And the thirteen of you who have your offices now at 26th and Broadway, you all practice medicine in Washington, too? A. Yes.

Q. How long have you been admitted in Washington? A. Personally?

Q. Yes. A. 1946.

778 Q. In Washington it is a hospital, and in Oregon it is a clinic; is that it? A. In Washington it is really a hospital plus out-patient facilities, the equivalent of a clinic. One wing of the hospital is entirely used for out-patient service. In Portland it is entirely like you would enter the Medical Arts Building or any of the clinics.

Q. How do the doctors—maybe you can't answer as to this except for yourself—decide whether they want to join the Clark County Medical Society or the Multnomah County Medical Society? A. That is decided by the residence. You can't be a member of the Multnomah Society unless you live in Multnomah County. You have to live here six months before you can apply. So if I live in Oregon I can't apply for membership in the Clark County.

Q. I see. That is true generally with County Medical Societies, that you must reside within the county? A. I believe so.

Q. Now, you spoke of a letter of Dr. Besson. Are you personally acquainted with Dr. Besson? A. For twenty-five years.

Q. Twenty-five years. A. We are friends.

Q. Has that acquaintanceship been solely, profes-
779 sional or social? A. No, it is a very warm friendship.

Q. Warm friendship. And that continues right up to now? A. Yes, sir.

The Court: What are these bonds, surety bonds?

Mr. Jaureguy: Oh, yes, I want to come to that.

Q. You referred to a bond. I believe you meant a share of stock. A. I believe that is the best expression.

Q. Yes, Double A stock. A. Yes.

Q. There are plenty of files that will tell what that is. You turned in that stock when you left? A. Yes.

Q. Oh, no, you couldn't have turned it in when you left, because you got a letter from Dr. Besson wanting you to appoint him your proxy. A. I think Dr. Besson might have forgotten that.

Q. He might have forgotten that? A. Yes.

The Court: What were those worth? What did you turn them in for, how much?

Mr. Jaureguy: I don't remember whether it is $25 or $50.

A. No, they were more. They were originally $150, and I think they were reduced to either $100 or $75.

Q. I think you are talking about the Multnomah
780 Medical Service Bureau, aren't you? A. Maybe I am.

The Court: Then he didn't turn in any stock in the OPS cancellation?

Mr. Jaureguy: I just assumed from his testimony he did.

The Court: Then he turned in his stock in both of them?

Mr. Jaureguy: Well, I will ask him.

Q. Isn't this it: That when the OPS took over the contracts of the Multnomah Medical Service Bureau you turned in your shares of stock in the Multnomah County Medical Service Bureau and obtained a share of stock in OPS? A. I cannot answer this question because I don't know the date when the change took place. I went into the service in April, 1942. If at that time it was still the Multnomah Service then—I have no recollection of the date of transition.

Q. So you don't know, then, whether when you went into the service you were a member of the Multnomah Medical Service Bureau or a member of the OPS? A. I don't know which it was then.

Mr. Marcus: Your Honor, the record shows it was 1941 that OPS was formed.

Mr. Jaureguy: Well, counsel, if you would think a moment you would know that is an entirely irrelevant statement, because that is not the date that is important. as the witness has pointed out. It is the date when the Multnomah went out of business and the OPS took over its business, and the records we have studied will
781 show it is much later than this 1941 date.

Q. Now, who is Dr. Besson? Is he a Portland physician? A. Physician or surgeon, a physician of the community.

Q. Is he associated with any hospital? A. He is the initiator and founder of the Holladay Park Hospital.

Q. What is his position there? A. He is the chief surgeon.

Q. Are you on the staff of that hospital? A. Yes.

Q. You have been on the staff how long? A. I have been on the staff since the same day it was founded. That was probably 1932. It is the old Veterans Hospital.

Q. You have been on the staff ever since? A. I have been on the staff ever since it has opened, but I don't know whether it is '32 or '33.

Q. That is over on the East Side? A. Yes, sir.

Q. Somewhere near Holladay Park? A. Yes. It used to be called Hahnemann Hospital.

Q. Hahnemann, yes. A. And they changed the name, I think, two years ago.

Q. To the Holladay Park Hospital? A. Yes.

782 The Court: Do they treat Permanente patients there?

A. Yes.

Mr. Jaureguy:

Q. You and Dr. Besson have been on the staff, then, regularly for many years? A. Many.

Q. Dr. Besson is a trustee of OPS, isn't he? A. He used to have—to hold office, yes.

Q. Could you tell us what proportion of your time is spent in your work with Permanente? Most of it, or just to a small extent? A. I would have to figure that out, because we do a great deal of private practice, too.

Q. All in those same offices on East 26th? A. In the

same offices. I can't tell you offhand how much time is allotted to private patients because there is no separation.

Q. One comes in as a private patient— A. One comes in and one goes out, and they are all treated, whether it is a fireman or a banker, or whoever it is, it is all the same.

Q. Doctor, do you treat patients that are members of the National Hospital Association? A. I have treated some; not many.

Q. I mean how long since you have treated any? A. Since I am with the organization, since I am in
783 this position. I think two years, maybe.

The Court: Who pays you when you treat a Permanente patient?

A. That would involve a little explanation, your Honor.

The Court: That is another prepaid plan, isn't it? Isn't that what it is, a prepaid plan?

A. Yes. We used to be—the physicians at the Permanente before the reorganization used to be on a salary paid by the Foundation in order to service the plan patients. At the same time we saw our private patients. When I accepted a job with the Permanente Foundation I had a large following, because I practiced in Oregon since 1926.

Mr. Jaureguy: Let me get closer so you won't have to talk so loundly. You don't mind if I come closer, your Honor?

A. When I accepted the position with the Kaiser Foundation or Permanente I brought with me a considerable following of patients, because I have practiced in this state, first in Corvallis and then in Portland, Oregon, since 1926, with the exception of the Army service. Now, the revenue of these patients, which were charged according to the fees of the Medical Society, went to the Foundation, and that happened with all the physicians that were employed by them, so that the Foundation really, we felt, took advantage of us up to a certain point.

The Court: You mean the Kaiser patients were paying you and you were turning it over to Kaiser for his Foundation. Is that what it amounted to?

784 A. Yes, sir. But within one year after I came we negotiated with the Board of Trustees a different agreement in which now none of the fees that are collected

or charged for private patients of a private nature has any dealings with the Foundation.

The Court: Where did Kaiser get this money used to pay your salaries with? From the Government?

A. From the subscriptions—

Mr. Marcus: That is a leading question, your Honor.

The Witness: From the subscriptions—

The Court: I happen to know where he got his money, where he got all his money.

Mr. Jaureguy: I didn't know he got it from the Government. I thought he got it from the Reconstruction Finance Corporation

The Witness: I would be in no position, of course, to testify as to the finances.

Mr. Jaureguy:

Q. You are not representing Henry Kaiser here today? A. No, sir. But we negotiated with the Foundation, the Board of Trustees, an agreement in which is the following at this time: Private fees belong to the Doctors' Clinic.

Q. That is different than it used to be? A. Entirely different. Kaiser—I mean I am using the name
785 Kaiser for a large organization—has nothing to do with it.

Q. With the private fees? A. Nothing. We handle our private fees like any other medical group would handle it.

Q. Since when has that been the situation? A. Two years now.

The Court: You seemed to complain a little while ago that when you saw an OPS member the OPS paid you. Now, suppose an OPS doctor saw a Permanente patient, would the Permanente pay him?

A. No.

The Court: Then it is tit for tat, isn't it?

A. With one exception, your Honor. We don't profess that we are an open panel.

Mr. Marcus: That is the difference, your Honor.

The Witness: We tell our subscribers we are a closed panel. You can choose, if you subscribe to our plan, among the doctors available.

The Court: Among your staff?

A. Yes, sir.

The Court: I understand. All right.

Mr. Jaureguy:

Q. I don't know as we got through with this interesting story you were telling about the change-over from where you gave your private fees to Kaiser and now when you keep them. At the present time your private fees
786 go into the partnership or into your own— A. Go into the partnership.

Q. Go into the partnership. When you treat a Permanente member what happens then? A. Now, the subscriptions for the Kaiser Health Plan are one sum. They are collected just like the OPS.

Q. Yes. A. And of that the doctors' clinic or our partnership receives a percentage.

Q. What is that percentage? A. I believe it is now 45 per cent.

Q. You receive 45 per cent of what the member pays? A. Yes, sir. The rest goes for overhead and upkeep, because the Foundation furnishes all equipment.

The Court: How many members do you have?

A. Close to 20,000.

The Court: You have thirteen doctors. I don't see how you can handle them all.

Mr. Marcus: I wonder if I could clarify that.

Mr. Jaureguy: No, let the witness do the clarifying.

The Court: Let him do the clarifying. The average, then, is about one doctor to 400 patients.

Mr. Marcus: Yes, but he has testified that they have facilities at Vancouver. I suppose there are doctors
787 there also.

Mr. Jaureguy:

Q. You might explain to the Judge whether this handling so many patients is due to the skill of the doctors, particularly, or the number, or what. A. I named thirteen men as members of the partnership, your Honor, but we have several physicians in training or employed as assistants, so the total amount of physicians is 17.

Q. Seventeen total. The extra four are in training? A. Or employed.

Q. Employed? A. Yes.

Q. Those employed, what are they? X-ray technicians and things like that? A. Oh, no. We have one gentleman employed who makes house calls only, because it would take too much of our time during busy office hours when we are called to an emergency or to see somebody at home, so we have one physician who just makes house calls.

Q. Now, this 45 per cent that you get from the collections from the members, I suppose your private fees then go into the partnership? A. Yes.

Q. And then that is divided in accordance with the partnership agreement among the partners? A. Then we have to pay our overhead out of it, too.

Q. And income taxes? A. Oh, yes.

788 Q. All right. So up to two years ago you were on a salary and the money you got from your private patients and everything else went to Kaiser and you got your salary? A. Right.

Q. I suppose you know why the Medical Society and the Medical School cancelled that Vanport contract? A. I think I know.

Q. And that reason is— A. Financial.

Q. They lost $70,000 in taking that over. And the Foundation was able to make a success because they got a subsidy from the Government; that is correct, isn't it?

Mr. Marcus: An objection on the ground of irrelevance.

A. We didn't.

Mr. Jaureguy: What is that?

A. We never got anything from the Government except that they leased us these facilities for a dollar a year, and that is all.

Q. That is all. A. And we made a go of it.

Q. Did the Vancouver Hospital get a subsidy from the Government? A. No.

Q. Didn't they? A. Not one penny.

789 Q. Now, when you were on a salary basis there was some manager there that got a big salary, wasn't there? Mr. Garfield or Dr. Garfield? A. Dr. Garfield is the medical adviser of the Kaiser family and the foundation.

Q. For the Kaiser family? A. And they are not only doing business here. Kaiser has instituted, to my knowledge, seven such institutions, which do a great deal of good.

Q. Oh, I don't doubt it. A. And have definitely their place.

Q. But what I am asking you is, when you were on a salary also one of the drains on these fees that you got and turned in was to pay Dr. Garfield's salary?

Mr. Marcus: An objection again, your Honor, on the ground of irrelevancy, this matter of going into salary.

The Court: Overruled.

A. I don't know who pays Dr. Garfield's salary, but I believe that the administrator of an institution that is probably turning over a business of twenty milions a year deserves some income from somewhere. I can't tell where he gets his income from.

790 Mr. Jaureguy:

Q. But that wasn't one of the complaints that you had when you wanted to go over from the salary basis to the partnership basis that you now have? A. No.

Q. Oh, yes, this hospital, Holladay Park Hospital, that, is approved by the American Medical Association for internship and a regular approved hospital? A. Yes.

Q. And so is the Vanport Hospital? A. The Vanport Hospital was approved by the American College of Surgeons. We had four interns and three residents at the hospital.

Mr. Jaureguy: That is all. Thank you, Doctor.

Redirect Examination

By Mr. Marcus:

Q. Just a minute, Doctor, a couple of questions. Does that 20,000 membership you stated a few minutes ago as constituting the Permanente Foundation membership include Vancouver residents? A. I may clarify that. First of all, I do not know the exact figures, and I don't wish to be quoted as giving an exact figure by saying 20,000, but it will come pretty close because we give family service. It is not only the subscriber, but it is invariably that the family, children, wife and parents, can come in if they so desire, and I think the whole total amount of people we service on the plan would not be very far from that.

Q. But that includes the Vancouver people?

791 A. That includes the Vancouver patients.

Q. And the facilities of Vancouver are available

to them as well as the facilities in Portland? A. Yes, sir.

Q. And there are doctors' facilities in Vancouver, are there not? A. We have a 24-hour service in both places.

Q. Now, one other question, Doctor. When you went to cash in your stock just prior to the time that you went into the service, do you recall whom you saw in that connection? A. No.

Mr. Marcus: That is all.

Mr. Jaureguy: That is all.

(Witness excused.)

The Court: Recess.

(Short recess.)

Mr. Marcus: Mrs. Steregere.

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792 LILLIAN STEREGERE was thereupon produced as a witness in behalf of Plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Marcus:

Q. Mrs. Steregere, are you connected with the Medford Corporation in any capacity? A. As a first-aid attendant.

Q. And where is that corporation located? A. In Medford, Oregon.

Q. And how long have you been in that position? A. About four years.

Q. Are the employees of that company covered by prepaid medical care insurance? A. Yes, it is.

Q. And with what company? A. The National Hospital Association.

Q. Would you say that it is well known in that community that the members are covered by the National Hospital Association? A. Yes.

Q. Now, calling your attention to the year 1948, did a Mrs. W. B. Henson come to the first-aid station at Medford Corporation to ask for your assistance? A. Yes.

Q. Could you tell us what occurred in that connec-
793 tion? A. She came to the first-aid station and told me that her husband was ill, running a temperature and having pains in his stomach, and wanted me to call a doctor, and I asked her what doctor, and she said Dr. Anthony, and so I called Dr. Anthony and the assistant at

the office, a woman in the office, asked directions out to the house and wanted to know who had recommended the doctor, and I told them a neighbor, and she asked me the symptoms—

Mr. Jaureguy: I wish to object to this as hearsay, if your Honor please.

The Court: Continue. Go ahead. She asked the symptoms—

A. And I related it to the girl in the office, and so she asked me who was calling, and I told her the first-aid nurse, and she said, "Well, just a minute," and evidently she talked to the doctor—

Mr. Jaureguy: I move that be stricken as—

The Court: Continue. Then what happened.

A. She said the doctor was busy, and I said, "Well, you asked directions," and then when she asked me—she asked me if the lady had enough money in the house to pay for the call out to the house, and the lady said that she didn't have so I personally guaranteed that the bill would be paid, but the girl at the office told me that they didn't cooperate with National Hospital and didn't recognize them as a medical association.

The Court: It is stricken. You can't bind the
794 doctor by his office girl, Mr. Marcus.

Mr. Marcus: Well, your Honor, here is an instance where she called the office of the doctor. There is no question about that. Now, the person in the doctor's office who customarily answers such calls answered that call. That person said, "Wait a minute," that she would have to consult the doctor. That person came back and talked to this lady. Now, certainly there is a clear-cut inference that she did not, of her own authority, make that statement without having consulted with the doctor, and certainly it is admissible. It is admissible for the fact that this woman called the office of the doctor, whether the doctor was in or not, called the office of the doctor and was told by someone in that office that that office would not take care of the patient because of the patient being under the National Hospital Association.

The Court: Do you think I could be bound by everything my secretary or some clerk in my office in there answering the telephone would say?

Mr. Marcus: Well, if it was the course of your business to have a secretary who did answer—